CLERK'S COP

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1930

No. 453

THE EAST OHIO GAS COMPANY, APPELLANT,

vs.

THE TAX COMMISSION OF OHIO ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO

FILED SEPTEMBER 13, 1930

(35,375)

(35,375)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1930

No. 453

THE EAST OHIO GAS COMPANY, APPELLANT,

vs.

THE TAX COMMISSION OF OHIO ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO

INDEX

	Original	Print
Record from district court of United States, Southern Ohio	2	1
Bill of complaint	2	1
Exhibit "A"—Letter from East Ohio Gas Co. to Tax Commission of Ohio, July 29, 1927	16	11
Exhibits "B-1-a" to "B-3-b"—Bills from treasurer and checks in payment of same	19	13
Exhibit "C"—Notice and demand	22	16
Exhibit "D"—Order of Commission denying application for review	23	17
Motion for restraining order....(omitted in printing)	24	
Notice of application for temporary injunction	25	18
Order to show cause	27	19
Answer	28	20
Narrative form of testimony	35	26
Exhibit "A"—Agreed statement of facts	36	26
Appendix A. Gas purchase agreements:		
Hope Natural Gas Company and The East Ohio Gas Company, original agreement, March 1, 1910	66	39
Supplemental agreement, April 12, 1921	72	43

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JANUARY 6, 1931

	Original	Print
Supplemental agreement, April 30, 1924	74	54
Supplemental agreement, September 1, 1928	79	57
Appendix B.		
Map	81	58
Opinion per curiam	82	59
Decree	87	63
Petition for appeal, assignments of error, and prayer for reversal	88	64
Order allowing appeal	90	65
Bond on appeal (omitted in printing)	91	
Citation and service (omitted in printing)	93	
Docket entries	95	66
Stipulation re transcript of record	96	66
Clerk's certificate (omitted in printing)	98	
Statement of points to be relied upon and stipulation as to parts of record to be printed	99	67

[fols. a-2]

IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO, EASTERN DIVISION

In Equity. No. 792

THE EAST OHIO GAS COMPANY, a Corporation, Complainant,

vs.

THE TAX COMMISSION OF OHIO, QUINCY A. DAVIS, JOHN S. Edwards, and George C. Braden, as Members of the Tax Commission of Ohio; Joseph T. Tracy, Auditor of the State of Ohio; H. Ross Ake, Treasurer of the State of Ohio; Clarence J. Brown, Secretary of the State of Ohio; Gilbert Bettman, Attorney General of Ohio, Defendants

BILL OF COMPLAINT

To the Honorable Judge of the United States District Court for the Southern District of Ohio, Eastern Division:

The East Ohio Gas Company, complainant herein, files this its Bill of Complaint and for its cause of action against the defendants hereinafter named, avers:

1. The East Ohio Gas Company is a corporation duly organized and existing under and by virtue of the laws of the State of Ohio with its principal office and place of busi- [fol. 3] ness at Cleveland, Ohio. The defendants, Joseph T. Tracy, H. Ross Ake, Clarence J. Brown and Gilbert Bettman are respectively the duly elected, qualified and acting Auditor of the State of Ohio, Treasurer of the State of Ohio, Secretary of the State of Ohio and Attorney General of the State of Ohio. The defendants Quincy A. Davis, John S. Edwards and George C. Braden are the duly appointed, qualified and acting members of the defendant, The Tax Commission of Ohio. The defendants are vested by the statutes of the State of Ohio with authority to fix and determine excise taxes upon the gross receipts of public utility corporations doing business in the State of Ohio and to enforce the collection of excise taxes and the penalties provided by statute for the failure to pay

the same. For convenience the respective defendants are referred to hereinafter by their official designations.

2. The ground of Federal jurisdiction asserted is that the excise taxes which the defendants have levied and threatened to collect from the complainant upon its gross receipts for the years 1927, 1928 and 1929, as hereinafter alleged, are upon gross receipts arising from interstate commerce and are a burden upon interstate commerce, contrary to the provisions of Article I, Section 8, of the Constitution of the United States. The amount in controversy, exclusive of interest and costs, exceeds the sum or value of $3,000.

3. The complainant is a natural gas company and a public utility as defined by the statutes of Ohio hereinafter referred to, engaged in the production, transportation and distribution of natural gas to more than 400,000 consumers in more than fifty municipalities in the northern and eastern parts of the State of Ohio and was so engaged at all [fol. 4] times herein material. The principal cities the complainant serves are Cleveland, Akron, Canton, Massillon and Youngstown. In connection with its business the complainant owns an doperates four trunk pipe lines extending from the Ohio River in Monroe and Belmont Counties northwesterly to the complainant's distribution systems in various municipalities. The complainant owns many parcels of real estate as well as large inventories of personal property distributed through nineteen counties of the State of Ohio, including the counties of Monroe, Belmont and Harrison within the Eastern Division of the Southern District of Ohio. In particular the complainant owns in fee the following parcel of real estate located in said judicial district:

"Situated in Section 31, Township 8 and Range 4 in Wheeling Township, Belmont County, State of Ohio, beginning at an iron pin in section line in the Morristown and Uniontown Road at top of hill where the road leaves section line and thence on said section line north 3½ degrees east 41.90 rods to an iron pin: thence south 86 degrees east 19.20 rods to an iron pin near east gas valve pit: thence south 86½ degrees east, 3.08 rods to an iron pin in aforesaid road: thence south 22½ degrees west 10.10 rods to an

iron pin in said road: thence south 30¼ degrees west 36.23 rods to an iron pin in said road and place of beginning."

4. During the years 1927, 1928 and 1929 approximately three-fourths of the supply of natural gas marketed by the complainant to its consumers in the State of Ohio was purchased by it either from The Hope Natural Gas Company, a corporation organized under the laws of West Virginia with producing fields located in that state, or from the Peoples Natural Gas Company, a corporation organized under the laws of Pennsylvania with producing fields lo- [fol. 5] cated in that state, delivery being made to the complainant in each case at the Ohio State line at which point the transmission lines of the complainant connect with the transmission lines of The Hope Natural Gas Company and of The Peoples Natural Gas Company. All natural gas purchased by the complainant from said companies moves directly from the producing wells in West Virginia and Pennsylvania across the Ohio state line, through the complainant's transmission lines and distribution systems in Ohio directly to consumers' appliances without interruption from the time it leaves the producing wells outside of Ohio until it is burned in consumers' appliances in Ohio. Pumping stations are maintained by the producing companies in their respective states and the gas is delivered into complainant's lines at sufficient pressure to deliver it at consumers' appliances. The remaining one-fourth of the complainant's supply of natural gas for said years came from producing fields in the State of Ohio.

5. The statutes of Ohio in force during said three years provide in substance:

General Code Section 5470, that each public utility shall annually, on or before August first, under oath of an appropriate officer, file a statement with the Tax Commission of Ohio in such form as the Commission may prescribe;

General Code Section 5474, that such statement shall contain "the entire gross receipts of the company, including all sums earned or charged, whether actually received or not, from whatever source derived, for business done within this state for the year next preceding the first day of May, including the company's proportion of gross receipts for business done by it within this state in connec-

tion with other companies, firms, corporations, persons [fol. 6] or associations, but this shall not apply to receipts from interstate business, or business done for the Federal Government. Such statement shall also contain the total gross receipts of such company for such period in this state from business done within the state";

General Code Section 5475, that on the first Monday of September said Tax Commission shall ascertain and determine the entire gross receipts of each natural gas company for business done within the state for the year next preceding the first day of May, excluding therefrom "all receipts derived wholly from interstate business or business done for the Federal Government";

General Code Section 5476, that the amount so ascertained shall be the gross receipts of such natural gas company for business done within this state for such year;

General Code Section 5481, that on the first Monday of October the Commission shall certify to the Auditor of State the amount of gross receipts so determined;

General Code Section 5483, that in the month of October, annually, the Auditor of State shall charge for collection from each natural gas company a sum in the nature of an excise tax, "for the privilege of carrying on its intra-state business, to be computed on the amount so fixed and reported by the Commission as the gross receipts of such company on its intra-state business for the year covered by its annual report to the Commission, as required in this act, by taking one and thirty-five one-hundredths per cent of all such gross receipts";

General Code Section 5488, that after determining the amount of such taxes the Auditor of State shall prepare proper duplicates and reports and certify them to the Treasurer of State for collection, and upon receipt of such [fol. 7] duplicate the Treasurer shall notify each company charged with taxes of the amount due from it;

General Code Section 5489, that the Treasurer of State shall proceed to collect such taxes and report to the Auditor of State the amount and the name of the company from whom collected.

6. On or before August first in each of the years 1927, 1928 and 1929 complainant duly reported to the Tax Com-

mission of Ohio, as required by the statutes aforesaid, on forms approved by said Commission, the amount of its gross receipts for the year ending April 30th preceding as follows:

	1927	1928	1929
Entire receipts from intra-state business (exclusive of business done for the Federal Government)	6,831,811	8,592,528	9,525,176
Intra-state business done for Federal Government	404	466	519
Entire receipts from interstate business (exclusive of business done for the Federal Government)	20,799,907	20,374,214	20,646,916
Interstate business done for Federal Government	1,398	1,841	1,262
Total	27,633,520	28,968,549	30,170,873

The receipts so reported as receipts from interstate business are in their entirety receipts from the sale of gas purchased from The Hope Natural Gas Company or The Peoples Natural Gas Company and sold by the complainant in Ohio, as hereinbefore alleged. The receipts so reported as receipts from intra-state business are in their entirety receipts from the sale of gas produced or purchased and sold by the complainant in Ohio. The receipts reported as business done for the federal government are the receipts from the sale of gas to United States Post Offices and hospitals. The complainant accompanied the report of 1927 to the Tax Commission of Ohio with a letter advising it of the [fol. 8] separation it had made in its report between receipts from interstate and intra-state business and the facts upon which such separation was made. A true copy of said letter is marked "Exhibit A", attached hereto and made a part hereof.

7. Thereafter in each of the years 1927, 1928 and 1929 the Tax Commission of Ohio, acting pursuant to the statutes hereinbefore set forth, fixed the intra-state gross receipts of the complainant and certified the same to the Auditor of State in the following amounts:

	Intrastate Gross Receipts
1927	$6,831,811
1928	8,592,528
1929	9,525,176

Thereafter in each year the Auditor of State computed the tax on the gross receipts so certified to him at the rate of one and thirty-five one-hundredths per cent and certified the tax so computed to the Treasurer of State who rendered statements therefor to this complainant. Thereafter in each year and prior to December fifteenth, the last day provided by law for the payment of the same, the complainant paid said excise taxes to the Treasurer of the State of Ohio. The amount of taxes so computed, certified, billed and paid was:

1927	$92,229.45
1928	115,999.13
1929	128,589.88

True copies of said bills from the Treasurer of the State of Ohio, and of the checks in payment of the same are marked Exhibits "B-1a", "B-1b", "B-2a", "B-2b", "B-3a", and "B-3b", attached hereto and made a part hereof. In addition to these excise taxes the Complainant paid real and personal property taxes in Ohio as follows:

[fol. 9] 1927	$1,008,610
1928	1,044,917
1929	1,108,628

8. On January 13, 1930, the Tax Commission of Ohio made the following order:

"In the Matter of Omitted Amounts of Certain Public Utilities

"The Commission this day proceeding to review the amounts heretofore found by it to have been omitted by certain public utilities as named in Duplicate No. 401, and said companies having been notified of the amounts so fixed as aforesaid and offered opportunity to be heard in the matter of such omitted amounts of gross receipts, and having carefully and fully considered all facts submitted and all other facts and information coming to its knowledge, orders that the amounts of such omitted gross receipts be and the same are finally fixed and determined to be the amounts as set out in the accompanying schedule; and fur-

ther orders that the schedule be certified to the Attorney General with the request that he institute such action as may be proper or necessary in the Court of Common Pleas of Franklin County or of any county in which such companies are doing business or own property for the collection of such fees and penalties."

In the schedule accompanying said order the Tax Commission of Ohio found and certified what it designated as "omitted gross receipts" of the complainant as follows:

1927	$20,799,907
1928	20,376,021
1929	20,643,916

9. Said order of January 13, 1930, was certified to the Auditor of State by the Tax Commission of Ohio and on or [fol. 10], about the same date said auditor computed the excise taxes thereon at the rate of one and thirty-five one-hundredths per cent, together with penalties of fifteen per cent, and delivered the same to the Attorney General of Ohio for collection. The amount of taxes and penalties so certified for collection are as follows:

1927 excise tax	$280,798.74	
Penalty	42,119.81	
		$322,918.55
1928 excise tax	275,076.28	
Penalty	41,261.44	
		316,337.72
1929 excise tax	278,682.87	
Penalty	41,803.93	
		320,496.80
		$959,753.07

10. On or about January 16, 1930, the Attorney General of Ohio notified the complainant that the amounts above set forth had been certified to him for collection and demanded immediate payment thereof. A true copy of such notice and demand is marked "Exhibit C", hereto attached and made a part hereof.

11. On March 13, 1930, and within sixty days from the date of said order of January 13, 1930, the complainant

duly filed with the Tax Commission of Ohio an application for a review and re-hearing of said order as permitted by General Code Section 5517 and thereafter the same was denied by the Tax Commission of Ohio. A true copy of the order denying said application is marked "Exhibit D" hereto attached and made a part hereof.

12. The gross receipts of the complainant certified by the Tax Commission of Ohio as omitted for the years 1927, 1928 and 1929, by said order of January 13, 1930, are gross receipts from sales to the United States Government to the [fol. 11] extent of $404 in 1927, $466 in 1928, and $519 in 1929 and the balance thereof are gross receipts from the sale in Ohio of natural gas purchased by the plaintiff from the supplying companies in West Virginia and Pennsylvania, as hereinbefore alleged, in paragraph 6, and are receipts from interstate commerce. The action of said Tax Commission of Ohio in including said gross receipts in said order and the action of the Auditor of the State of Ohio in fixing an excise tax thereon are illegal and void for the reasons—first, that the statutes of Ohio, as hereinbefore set forth, do not impose an excise tax upon said gross receipts which are the recepits from interstate commerce and from business done for the Federal government, and second, the effect of said order of the Tax Commission of Ohio and of said action of the Auditor of the State of Ohio is the imposition of a tax and burden upon interstate commerce contrary to the commerce clause of the Federal Constitution, to-wit Article I, Section 8, thereof.

13. By the provisions of the statutes of Ohio, General Code, Section 5506, it is provided that annually on the day fixed for the payment of any excise tax required to be paid by law "such tax, together with any penalties subsequently accruing thereon, shall become a lien on all property in this state of a public utility or corporation" and that "such lien shall continue until such taxes, together with any penalties subsequently accruing thereon, are paid." Said illegal and invalid taxes as so assessed, together with penalties thereon, is now a lien on the real and personal property of this plaintiff in the State of Ohio and constitutes a cloud upon the title of the complainant to said property for the removal of which the complainant has no adequate remedy save in a court of equity.

[fol. 12] 14. By the provisions of the statutes of Ohio it is provided:

General Code Section 5509, that if any public utility fails to pay any tax or fee for a period of ninety days after the time prescribed for paying the same, the Commission shall certify such fact to the Secretary of State and "the Secretary of State shall thereupon cancel the Articles of Incorporation of any such corporation which is organized under the laws of this state by appropriate entry upon the margin of the record thereof" and "thereupon all the powers, privileges and franchises conferred upon such corporations, by such Articles of Incorporation or by such certificate of authority, shall cease and determine";

General Code Section 5510, that any person or persons who shall exercise or attempt to exercise any powers, privileges or franchises, under the Articles of Incorporation after the same are canceled shall be fined not less than $100 nor more than $1,000;

General Code Section 5512, that in addition to all other remedies for the collection of taxes the Attorney General shall, upon the request of the Tax Commission, whenever any taxes, fees or penalties are due from any public utility or corporation and shall have remained unpaid for a period of ninety days, apply to the Common Pleas Court of Franklin County, or of any county in the state in which such public utility or corporation is located, or has an office, or place of business, for an injunction to restrain such public utility or corporation from the transaction of any business within this state, until the payment of such taxes, fees or penalties thereon; and if it is made to appear to the Court, upon [fol. 13] hearing, that such public utility has failed and neglected for ninety days to pay such taxes, fees or penalties thereon, such Court of Common Pleas shall grant and issue such injunction.

15. The defendants and each of them in their respective capacities hereinbefore stated threaten to, and will unless restrained by order of this Court, attempt to enforce and collect said additional and invalid excise taxes fixed for the years 1927, 1928 and 1929 and threaten to, and will unless so restrained, exercise all the powers and enforce against the complainant all the penalties provided by the statutes hereinbefore set forth with the result that the complainant but for the interposition of this Court is threat-

ened with the revocation and cancellation of its authority to do business in the State of Ohio, with a suit to enjoin its transaction of further business in the State of Ohio, all of which will inevitably and irreparably injure its business in this state, now approximating $30,000,000 per annum, and will inevitably and irreparably injure the public that it serves. From this situation the complainant has no relief save in a court of equity.

Wherefore the complainant prays:

a. That writs of subpoena be issued to each of the defendants hereinbefore named commanding each of them to appear herein and answer this complaint but not under oath, answer under oath being expressly waived.

b. That said order of the Tax Commission of Ohio dated January 13, 1930, purporting to determine omitted gross receipts for the years 1927, 1928 and 1929, as hereinbefore alleged, and the taxes thereon computed by Joseph T. Tracy, Auditor of State, be each of them declared to be [fol. 14] void and of no effect, and the title to the complainant's property be quieted as to the lien of said taxes.

c. That writs of injunction both temporary and permanent issue to the defendants and each of them enjoining and restraining them, their employes and agents from attempting in any manner to collect said additional excise taxes assessed for the years 1927, 1928 and 1929, from attempting to collect or enforce any of the penalties assessed on account thereof, and from attempting in any manner to cancel the charter of this complainant or its authority to do business in Ohio, or from enforcing any penalty or pursuing any remedy provided by the statutes of Ohio on account of the complainant's failure to pay said taxes and penalties thereon for the years 1927, 1928 and 1929.

d. That the Court grant such other and further relief as the complainant may be entitled to receive in equity.

William B. Cockley, Solicitor for Complainant.
Tolles, Hogsett & Ginn, of Counsel.

[fol. 15] *Duly sworn to by R. W. Gallagher. Jurat omitted in printing.*

[fol. 16] EXHIBIT A TO BILL OF COMPLAINT

July 29, 1927.

The Tax Commission of Ohio, Columbus, Ohio.

Re, the East Ohio Gas Company 1927 Gross Receipts Return

GENTLEMEN: We hand you herewith the return of The East Ohio Gas Company of its gross receipts for the year 1927 on forms prescribed by your Commission. You will observe that this year we are returning as gross receipts of interstate business $20,799,907, and for intra-state business $6,831,811.

We desire to state for your benefit, fully and fairly, the facts which we think require this separation.

The East Ohio Gas Company is an Ohio corporation operating in the northern and eastern part of the state, Cleveland, Akron, Canton, Massillon and Youngstown being the largest communities in which it operates. A small part of its supply of natural gas comes from the Ohio fields, but the principal source of supply has for many years been the Hope Natural Gas Company of West Virginia. The contract between the Hope Company and The East Ohio Gas Company, of many years' standing, provides that the gas "shall be delivered by the Hope Company to the Ohio Company at the boundary line between the State of Ohio and the State of West Virginia", and the lines of the two companies are there connected. In other words, there is no interruption of the flow of gas from the time it leaves the West Virginia fields until it is consumed in customers' appliances.

As you know, the Attorney General has recently ruled under date of June 8th, 1927, in response to a letter from [fol. 17] your Commission concerning the W. Electric Company, that electric current similarly purchased in West Virginia and sold in Ohio in precisely the same manner as our gas is sold is interstate business, and the receipts therefrom are receipts from interstate business and not subject to an excise tax.

Likewise, the Supreme Court of the United States has held in the case of Peoples Gas v. Public Service Commission of Pennsylvania, 270 U. S., 550, 554, as follows:

"As respects the West Virginia gas we are of opinion, in view of its continuous transportation from the places

of production in one state to those of consumption in the other and its prompt delivery to purchasers when it reaches the intended destinations, that it must be held to be in interstate commerce throughout these transactions. Prior decisions leave no room for discussion on this point and show that the passing of custody and title at the state boundary without arresting the movement to the destinations intended are minor details which do not affect the essential nature of the business. * * *"

In the above case the court had before it a situation precisely analogous to ours. There the Peoples Company was purchasing its principal supply of gas from the Hope Natural Gas Company under a contract precisely such as we have, which called for delivery at the state line. Mechanically, in that case as in ours, the pipe lines of the two companies were connected at the state line and there was no interruption whatever of the flow of gas, which was continuous from the fields to the consumers' meters. In the Peoples case the gas was actually metered at the boundary line, whereas, in our case, it is metered some distance back on the West Virginia side, a difference which, if it were of [fol. 18] any importance, but probably is not, will be in our favor rather than against us.

More recently still in the case of Public Utilities Commission v. Attleboro Company, 273 U. S. 83, the Supreme Court of the United States similarly held that the delivery of electric current at the state line by one company to another did not make the business intra-state business, but that it retained its character as interstate business.

These decisions, together with the Attorney General's opinion, seem to us clearly to cover the entire situation.

We shall be glad to furnish your commission or the Attorney General with any other information that you may desire and to file a more extended brief if it will be helpful. In the event that, for any reason, you are not inclined to follow this return in its separation of interstate and intrastate receipts, we respectfully request that before you determine the gross receipts of this company we may appear before the Commission and be heard in the matter of such determination.

Very truly yours, The East Ohio Gas Company, by R. W. Gallagher, President.

[fol. 19] EXHIBIT B-1-b TO BILL OF COMPLAINT

No. 20

Minimum Fee, $10.00. Columbus, Ohio.
Excepting S. C. F. L. Schedule 2.

State of Ohio, Department of Treasurer of State

Sec. General Code	Basis of tax	Rate, %	Amount of tax
Steam R. R., 5486	Intra-State	4	
Electric R. R., 5484	Gross Earnings	1.2	
Slp. Car, F. L. E., 5468	Proportion of Ohio Capital	1.35	
Pipe Line, 5487	Intra-State	4	
Exp. & Teleg., 5485		2	
Misc. Utilities, 5483	Gross Receipts, 6,831,811	1.35	92,229.45

Pay on or before December 15, 1927, to avoid 15% penalty.

The East Ohio Gas Co. R. W. Brink, Secy., 1405 E. 6th St., Cleveland, Ohio

NOTE.—If receipt is desired, send this statement and stub with check. This statement will then be returned, properly receipted.

EXHIBIT B-1-b TO BILL OF COMPLAINT

Combined Check and Receipt

The East Ohio Gas Company

Voucher No. L-78. Sub No. —.
Check No. 21504.

Cleveland, O., Dec. 13, 1927.

Paid Dec. 15, 1927.

Pay to the order of State of Ohio, Bert B. Buckley, Treasurer, $92,229.45, Ninety-two Thousand Two Hundred Twenty Nine Dollars Forty Five Cents, —— Dollars.

Endorsement hereof is receipt in full of voucher numbered as above.

The East Ohio Gas Company, by (Sgd.) W. H. Holtz, Assistant Treasurer.

To the Union Trust Company, Cleveland, Ohio.
6-10.

Endorsement on back: Endorsed by State of Ohio, Bert B. Buckley, Treasurer of State.

[fol. 20] EXHIBIT B-2-a TO BILL OF COMPLAINT

No. 19

Minimum Fee, $10.00. Columbus, Ohio.
Excepting S. C. F. L. Schedule 2.

State of Ohio, Department of Treasurer of State

Sec. Genera lCode	Basis of tax	Rate, %	Amount of tax
Steam R. R., 5486.....	Intra-State	4	.....
Electric R. R., 5484.....	Gross Earnings.....	1.2	.....
Slp. Car, F. L. E., 5468.....	Proportion of Ohio Capital	1.35	.....
Pipe Line, 5487.....	Intra-State	4	.....
Exp. & Teleg., 5485.....	.....	2	.....
Misc. Utilities, 5483.....	Gross Receipts, 8,592,528.	1.35	115,999.13

Pay on or before December 15, 1927, to avoid 15% penalty.

The East Ohio Gas Co. R. W. Brink, Secy., 1405 E. 6th St., Cleveland, Ohio

NOTE.—If receipt is desired, send this statement and stub with check. This statement will then be returned, properly receipted.

EXHIBIT B-2-b TO BILL OF COMPLAINT

Combined Check and Receipt

The East Ohio Gas Company

Voucher No. L-84. Sub No. —.
Check No. 31109.

Cleveland, O., Dec. 12, 1928.

Paid Dec. 14, 1928.

Pay to the order of State of Ohio, Bert B. Buckley, Treasurer, $115,999.13, One Hundred Fifteen Thousand Nine Hundred Ninety Nine and 13/100 Dollars.

Endorsement hereof is receipt in full of voucher numbered as above.

The East Ohio Gas Company, by (Sgd.) W. H. Holtz, Assistant Treasurer.

To the National City Bank, Cleveland.
6-12.

Endorsement on back: Endorsed by State of Ohio, Bert B. Buckley, Treasurer of State.

[fol. 21] EXHIBIT B-3-a TO BILL OF COMPLAINT

No. 19

Minimum Fee, $10.00. Columbus, Ohio.
Excepting S. C. F. L. Schedule 2.

State of Ohio, Department of Treasurer of State

Sec. Genera lCode	Basis of tax	Rate, %	Amount of tax
Steam R. R., 5486.....	Intra-State	4	.....
Electric R. R., 5484.....	Gross Earnings.....	1.2	.....
Slp. Car, F. L. E., 5468.....	Proportion of Ohio Capital	1.35	.....
Pipe Line, 5487.....	Intra-State	4	.....
Exp. & Teleg., 5485.....	.....	2	.....
Misc. Utilities, 5483.....	Gross Receipts, 9,525,176.	1.35	128,589.88

Pay on or before December 15, 1929, to avoid 15% penalty.

The East Ohio Gas Co. R. W. Brink, Secy., 1405 E. 6th St., Cleveland, Ohio

NOTE.—If receipt is desired, send this statement and stub with check. This statement will then be returned, properly receipted.

EXHIBIT B-3-b TO BILL OF COMPLAINT

Combined Check and Receipt

The East Ohio Gas Company

Paid Dec. 12, 1929.

Voucher No. L-93. Sub No. —.
Check No. 40746.

Cleveland, O., Dec. 10, 1929.

Pay to the order of State of Ohio, H. Ross Ake, Treasurer, $128,589.88, One Hundred Twenty Eight Thousand Five Hundred Eighty Nine and 88/100 Dollars.

Endorsement hereof is receipt in full of voucher numbered as above.

The East Ohio Gas Company, by (Sgd.) W. H. Holtz,
Assistant Treasurer.

To the Union Trust Company, Cleveland, Ohio.
6-10.

Endorsement on back: Endorsed by State of Ohio, H. Ross Ake, Treasurer of State.

[fol. 22] EXHIBIT C TO BILL OF COMPLAINT

State of Ohio, Office of the Attorney General, Columbus

January 16, 1930.

In reply refer to File No. PU-36267.

East Ohio Gas Company, R. W. Gallagher, 1405 E. 6th Street, Cleveland, Ohio.

GENTLEMEN: The following account against you, has been certified to this department for collection:

Omitted Amounts

1927 excise tax	$280,798.74	
Penalty	42,119.81	
		$322,918.55

1928 excise tax	275,076.28	
Penalty	41,261.44	
		316,337.72
1929 excise tax	278,692.87	
Penalty	41,803.93	
		320,496.80
		$959,753.07

Kindly send to me a certified check for the aforesaid amount, made payable to the Treasurer of State.

Trusting you will give this matter your prompt attention, I am,

Very truly yours, Gilbert Bettman, Attorney General.

[fols. 23 & 24] EXHIBIT D TO BILL OF COMPLAINT

March 20, 1930.

In the Matter of the Application of THE EAST OHIO GAS COMPANY for a Review and Correction of the Order of the Tax Commission Certifying Omitted Amounts of Gross Receipts of This Company to the Attorney General

The East Ohio Gas Company having filed an application for review and correction of the order of the Tax Commission made on January 13, 1930 by which it found certain amounts of gross receipts to have been omitted from the reports of the above applicant for the years and in the amounts as follows:

1927	$20,799,907.00
1928	20,37[illegible],021.00
1929	20,6[illegible],916.00

and the commission coming on this day to review its order of that date, re-affirms its former decision and requests the Attorney General to proceed to collect the tax thereon for the respective years as set out in the order of January 13, 1930.

[fol. 25] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF APPLICATION FOR TEMPORARY INJUNCTION

To Honorable Myers Y. Cooper, Governor of the State of Ohio; Honorable Gilbert Bettman, Attorney General of the State of Ohio; Honorable Quincy A. Davis, John S. Edwards, and George C. Braden, Members of and Constituting the Tax Commission of Ohio; Honorable Clarence J. Brown, Secretary of State of Ohio; Honorable Joseph T. Tracy, Auditor of the State of Ohio; Honorable H. Ross Ake, Treasurer of the State of Ohio:

You and each of you are hereby notified that The East Ohio Gas Company, the above named complainant has filed its verified Bill of Complaint in the District Court of the United States for the Southern District of Ohio, Eastern Division, against The Tax Commission of Ohio, Quincy A. Davis, John S. Edwards and George C. Braden, as Members of The Tax Commission of Ohio, Joseph T. Tracy, Auditor of the State of Ohio, H. Ross Ake, Treasurer of the State of Ohio, Clarence J. Brown, Secretary of the State of Ohio, and Gilbert Bettman, Attorney General of Ohio, praying that a certain order of the Tax Commission of Ohio dated July 13, 1930, in fixing additional gross receipts for the [fol. 26] years 1927, 1928 and 1929 of the complainant as a public utility and the excise taxes based thereon be adjudged invalid and void and that the enforcement of said order and the collection of said taxes by any of the above named defendants be perpetually enjoined.

In such suit the complainant has moved for an interlocutory injunction to be in effect during the pendency of the suit enjoining the above named defendants and each of them from any proceedings to enforce said order and from any proceedings against the complainant for non-payment of said excise taxes. The motion for such interlocutory injunction will be heard in the United States District Court at the Court House thereof in the city of Columbus, Franklin County, Ohio, on the 7th day of June, 1930, at ten o'clock A. M.

William B. Cockley, Solicitor for the East Ohio Gas Company.

Service of the above notice is hereby acknowledged by copy thereof together with a copy of the Bill of Complaint this 2nd day of April, 1930.

Myers Y. Cooper, Governor of the State of Ohio; Quincy A. Davis, John S. Edwards, and George C. Braden, Members of and Constituting the Tax Commission of Ohio; Clarence J. Brown, Secretary of State of Ohio; Joseph T. Tracy, Auditor of the State of Ohio; H. Ross Ake, Treasurer of the State of Ohio; Gilbert Bettman, Attorney General of Ohio, by Gilbert Bettman, Attorney General, Solicitor for Myers Y. Cooper, Governor of the State of Ohio; Quincy A. Davis, John S. Edwards, and George C. Braden, Members of and Constituting the Tax Commission of Ohio; Clarence J. Brown, Secretary of State of Ohio; Joseph T. Tracy, Auditor of the State of Ohio; H. Ross Ake, Treasurer of the State of Ohio.

[fol. 27] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER TO SHOW CAUSE

This cause coming on to be heard on the verified bill of complaint, and on motion of the complainant, it is ordered that the defendants appear before the Judge of this District Court of the United States for the Southern District of Ohio and a Judge of the Circuit Court of the United States and another District Judge of the United States Court sitting to hear this matter on the 7th day of June, 1930, at 10 o'clock A. M., at the Court Room of the United States District Court at Columbus, Ohio, and then and there show cause, if any they have, why the interlocutory injunction therein prayed for should not issue.

It is further ordered that a copy of this Order, certified under the hand of the Clerk and seal of the Court, be served on each of the defendants and that hearing of this cause on an application for an interlocutory injunction be had and proceeded with in accordance with Section 266 of the Judicial Code of the United States as amended.

Dated at Columbus, Ohio, Eastern Division of the Southern District of Ohio, this 2nd day of April, 1930.

Benson W. Hough, Judge of the United States District Court for the Southern District of Ohio.

[fol. 28] In United States District Court

[Title omitted]

Answer of the Tax Commission of Ohio, Quincy A. Davis, John S. Edwards, and George C. Braden, as Members of the Tax Commission of Ohio; Joseph T. Tracy, Auditor of State of the State of Ohio; H. Ross Ake, Treasurer of State of the State of Ohio; Clarence J. Brown, Secretary of State of the State of Ohio, and Gilbert Bettman, Attorney General of the State of Ohio, to the Bill of Complaint of the Complainant Herein

The defendants, each of them, saving to themselves the right to claim and take by this their answer whatever advantages might have been secured by motion to dismiss said bill of complaint, for the reason that on its face it does not state a cause of action in equity, and saving to themselves, and each of them, every defense in point of law arising upon the face of the bill of complaint, as hereinafter made, file this their answer to said bill of complaint.

[fol. 29] 1. Defendants admit the matters and things set up in paragraph 1 of the bill of complaint, but in this behalf defendants aver that the plaintiff has not in said paragraph or elsewhere in said bill of complaint stated or alleged the citizenship and place of residence of said defendants or of any of them.

2. Defendants admit that the federal jurisdiction of this case is asserted by plaintiff on the ground that the excise taxes which the defendants have levied and threatened to collect from the plaintiff upon its gross receipts for the years 1927, 1928 and 1929, are upon gross receipts arising from interstate commerce and that the same are a burden upon interstate commerce, contrary to the provisions of Article I, section 8, of the Constitution of the United States; but defendants deny that the excise taxes levied upon the

gross receipts of the plaintiff for the years 1927, 1928 and 1929, or in any of said years, are upon gross receipts arising from interstate commerce or that the same are a burden upon interstate commerce, under the provisions of Article I, section 8, of the Constitution of the United States, or otherwise. The defendants admit that the amount in controversy in this case, exclusive of interest and costs, exceeds the sum or value of $3,000.

3. Defendants admit that the complainant is a natural gas company and a public utility, as defined by the statutes of Ohio, and that complainant is engaged in the transportation and distribution of natural gas to consumers in the northern and eastern parts of the state of Ohio and was so engaged at all times material in the consideration of this case. Defendants admit that the principal cities which the complainant serves are Cleveland, Akron, Canton, Massillon and Youngstown. Defendants have no knowledge or information as to whether now and at the other times material to this case the complainant was engaged in the production of natural gas nor as to the number of consumers of such natural gas nor as to the number of municipalities in which such consumers reside. Defendants have no knowledge or information as to whether the complainant owns or operates four trunk pipe lines extending from the Ohio River in Monroe and Belmont Counties to the complainant's distribution systems in various municipalities where [fol. 30] such natural gas is consumed. Defendants have no knowledge or information as to whether complainant owns any parcels of real estate or inventories of personal property in the counties mentioned and referred to in the third paragraph of the bill of complaint and defendants have no knowledge or information as to whether complainant owns the particular property therein described.

4. Defendants have no knowledge or information that during the years 1927, 1928 and 1929, approximately three-fourths of the supply of natural gas marketed by the complainant to its consumers in the state of Ohio was purchased by it either from The Hope Natural Gas Company, a corporation organized under the laws of West Virginia, with producing fields located in that state, or The Peoples Natural Gas Company, a corporation organized under the

laws of Pennsylvania, with producing fields located in that state. Defendants admit that the gas which was purchased of said The Hope Natural Gas Company and The Peoples Natural Gas Company during said years 1927, 1928 and 1929 was in each case delivered to the complainant at the Ohio state line and that at points on this line the transmission lines of the complainant connected with the transmission lines of The Hope Natural Gas Company and The Peoples Natural Gas Company. Defendants deny that all natural gas purchased by the complainant from said companies moved directly from the producing wells of said companies in West Virginia and Pennsylvania across the Ohio state line and through the complainant's transmission lines and distribution systems in Ohio directly to consumers' appliances without interruption from the time it left the producing wells outside of Ohio until it was burned in consumers' appliances in Ohio. Defendants have no knowledge or information as to whether pumping stations are maintained by said producing companies in their respective states or that the gas purchased of said producing companies was delivered into complainant's lines at sufficient pressure to deliver it at consumers' appliances. Defendants admit that the gas marketed by complainant in Ohio during the years 1927, 1928 and 1929, over and above that purchased by it from The Hope Natural Gas Company and The Peoples Natural Gas Company, came from producing fields in the state of Ohio, but defendants have no knowl- [fol. 31] edge or information as to the proportion of said Ohio gas to the total amount of gas marketed by complainant in the state of Ohio during said years. As to said natural gas obtained by complainant from Ohio gas producing fields and sold and marketed by it during said years 1927, 1928 and 1929, defendants aver that at various points in the state of Ohio such gas was pumped into the pipe lines of complainant carrying said West Virginia and Pennsylvania gas and was intermingled with said West Virginia and Pennsylvania gas before any of the gas sold by the complainant reached the burning appliances of complainant's consumers.

5. Defendants admit the matters and things and legal conclusions stated in the 5th paragraph of the bill of complaint.

6. Defendants admit that on or before August 1st in each of the years 1927, 1928 and 1929, complainant duly reported to the Tax Commissioner of Ohio, on forms submitted by the Tax Commission of Ohio, the amount of its gross receipts for the year ending April 30th of each of said years, in figures, manner and form, as set out in the 6th paragraph of the bill of complaint.

Defendants deny that the receipts so reported as receipts from interstate business were in their entirety receipts from the sale of gas purchased from The Hope Natural Gas Company or The Peoples Natural Gas Company and sold by the complainant in Ohio and deny that the receipts so reported by complainant as receipts from intrastate business were in their entirety receipts from the sale of gas produced or purchased and sold by the complainant in the state of Ohio. Defendants admit that said receipts reported as business done for the federal government were receipts from the sale of gas to the United States postoffices and hospitals. Defendants admit that the complainant accompanied the report of 1927 to the Tax Commission of Ohio with a letter advising said Tax Commission of the separation complainant had made in its report between receipts from interstate and intrastate business and that a true copy of said letter is marked "Exhibit A" and made a part of the bill of complaint, but defendants deny the materiality, relevancy or competency of said letter or of the statements therein contained.

[fol. 32] 7. Defendants admit the matters and things set out in the 7th paragraph of the bill of complaint.

8. Defendants admit the matters and things set out in the 8th paragraph of the bill of complaint.

9. Defendants admit the matters and things set out in the 9th paragraph of the bill of complaint.

10. Defendants admit the matters and things set out in the 10th paragraph of the bill of complaint.

11. Defendants admit the matters and things set out in the 11th paragraph of the bill of complaint.

12. The defendants admit that the gross receipts of the complainant certified by the Tax Commission of Ohio, as omitted for the years 1927, 1928 and 1929, by said order

of January 13, 1930, are gross receipts from the sales to the United States Government to the extent of $404.00 in 1927, $466.00 in 1928 and $519.00 in 1929. Defendants have no knowledge or information as to how much, if any, of the gross receipts of the complainant certified by the Tax Commission of Ohio as omitted for the years 1927, 1928 and 1929, by said order of January 13, 1930, were receipts from the sale in Ohio of natural gas purchased by the complainant from said supply companies in West Virginia and Pennsylvania. Defendants deny that said receipts or any part thereof were from interstate commerce.

Defendants deny that the action of said Tax Commission of Ohio, in including said gross receipts in said order and the action of the auditor of state of Ohio in fixing an excise tax thereon, are illegal and void for the reasons set out in the 12th paragraph of the bill of complaint or for any other reason, and defendants specifically deny that the effect of said order of the Tax Commission of Ohio, and of said action of the auditor of state of the state of Ohio is the imposition of a tax and burden upon interstate commerce, contrary to the commerce clause of the federal constitution, to-wit: Article I, section 8 thereof; and defendants deny that the statutes of the state of Ohio do not impose an excise tax upon the gross receipts of the complainant certified by the Tax Commission of Ohio as omitted for the years 1927, 1928 and 1929, by said order of January 13, 1930, other than such gross receipts as may have been from sales to the United States Government.

[fol. 33] 13. Defendants admit that by section 5506 of the General Code of Ohio it is provided that annually, on the day fixed for the payment of any excise tax required to be paid by law, such tax with any penalties subsequently accruing thereon, shall become a lien upon all property in this state of a public utility or corporation and such lien shall continue until such taxes, together with any penalties subsequently accruing thereon, are paid. Defendants admit that said taxes here in question so assessed, together with the penalties thereon, are now a lien on the real and personal property of complainant in the state of Ohio and that the same are a cloud upon the title of plaintiff to said property. Defendants deny that said taxes are illegal and invalid or that complainant has no adequate remedy for the

removal of the lien of said taxes otherwise than in a court of equity.

14. Defendants admit the matters and things set out in paragraph 14 of the bill of complaint.

15. Defendants deny that said defendants, or any of them, threaten to or will, unless restrained, exercise all or any of the powers or enforce against the complainant all or any of the penalties provided for by the statutes set out in plaintiff's bill of complaint, and deny that the complainant is threatened with the revocation and cancellation of its authority to do business in the state of Ohio or that it is threatened with a suit to enjoin its transaction of further business in Ohio. Defendants deny that said defendants or any of them threaten to or will, unless restrained by an order of this court, attempt to enforce and collect said additional excise tax fixed for the years 1927, 1928 and 1929, otherwise than by an action at law to be brought by and in the name of the state of Ohio against said complainant to be filed by the Attorney General in a court of competent jurisdiction in the state of Ohio, to obtain a judgment against said complainant for said additional taxes, fixed for the years 1927, 1928 and 1929, and thereby collect the same.

Defendants further answering say that they have no knowledge or information as to the amount of the annual business of complainant, and deny that by reason of the [fol. 34] matters and things set out in the 15th paragraph of said bill of complaint or otherwise, complainant has no relief save in a court of equity.

Wherefore, having fully answered, defendants pray that their defenses in point of law arising on the bill of complaint, and hereinbefore made in this their answer, may be disposed of by the court; that the application of the complainant for a temporary injunction may be denied; that the bill of complaint may be dismissed at the cost of complainant and that they, and each of them, may go hence without day and have judgment for their costs.

Gilbert Bettman, Attorney General; L. F. Laylin, Special Counsel; William J. Ford, Special Counsel, Solicitors for the Defendants.

[fols. 35-38] IN UNITED STATES DISTRICT COURT

Narrative Form of Testimony

Statement under Equity Rule 75, Section (b), of the Testimony and Proceedings at Hearing

Be it remembered, that on Saturday, June 7, 1930, on the hearing on the motion for an interlocutory injunction in the above entitled cause in the District Court of the United States for the Southern District of Ohio, Eastern Division, before the Honorable Smith Hickenlooper, Benson W. Hough and Robert R. Nevin, Judges of said Court, the following procedings were had:

Present: Mr. Wm. B. Cockley, on behalf of complainant; Messrs. Gilbert Bettman and L. F. Laylin, on behalf of defendants.

Pursuant to agreement of counsel in open court this cause was submitted for final determination upon an agreed statement of facts, offered and received in evidence, marked Exhibit "A", hereto attached, and made a part hereof.

[fol. 39] EXHIBIT "A"

IN UNITED STATES DISTRICT COURT

[Title omitted]

Agreed Statement of Facts

It is agreed between the complainant and the defendants herein, by their respective counsel, that in addition to the facts admitted by the pleadings herein filed the facts hereinafter stated are true. This agreed statement of facts will be introduced upon the final hearing of this cause by both parties without other or additional evidence. By agreeing to this statement of facts each of the parties hereto reserves full right to claim that any of the facts hereby stipulated are incompetent and immaterial upon the issues joined.

1. Parties.—The allegations contained in paragraph 1 of the Bill of Complaint describing the parties to this action are true. Each of the individual defendants named

herein is a citizen of Ohio residing in the Southern Judicial District of Ohio, Eastern Division.

[fol. 40] 2. Federal Jurisdiction.—The grounds of federal jurisdiction are correctly stated in paragraph 2 of the Bill of Complaint. The amount in controversy, exclusive of interest and costs, exceeds the sum or value of $3,000.00.

3. General Nature of East Ohio's Business.—The complainant, hereinafter for convenience sometimes called "East Ohio," is a natural gas company and a public utility as defined by the Statutes of Ohio, engaged in the production, transportation and distribution of natural gas and during the years 1927, 1928 and 1929 was distributing natural gas to more than 450,000 consumers under local franchises authorizing the use of public streets for that purpose in more than 50 municipalities in the northern and eastern parts of the state of Ohio. The principal municipalities served by the complainant were Cleveland, Akron, Canton, Massillon, Youngstown, Niles, Warren and neighboring municipalities. East Ohio owns many parcels of real estate as well as large inventories of personal property distributed through 19 counties of the state of Ohio including the counties of Monroe, Belmont and Harrison within the eastern division of the southern district of Ohio. East Ohio owns in fee a parcel of real estate located in said judicial district and correctly described in paragraph 3 of the Bill of Complaint.

4. Hope Natural Gas Company.—The Hope Natural Gas Company, for convenience sometimes hereinafter called "Hope Company," is a corporation organized and existing under the laws of the state of West Virginia. Its principal business is the production of natural gas and the sale thereof to other companies for distribution. It has extensive natural gas fields in West Virginia, and has, since [fol. 41] the organization of the present East Ohio Gas Company in 1910, been its principal source of supply pursuant to a contract which, with subsequent modifications thereof, is incorporated herein as "Appendix A."

During the years 1927, 1928 and 1929 approximately 72% of East Ohio's supply of natural gas was purchased by it from the Hope Company pursuant to the terms of said contract.

More than 90% of all voting stocks of East Ohio, the Hope Company and The Peoples Natural Gas Company is owned by the Standard Oil Company of New Jersey and was so owned at all times herein material.

5. Collection of West Virginia Gas.—All gas delivered by the Hope Company to East Ohio passes through what is known as the Hope Company's Hastings Station located in the State of West Virginia approximately 25 miles south of the Ohio River. Into this station run a number of transmission lines from the various parts of the Hope Company's West Virginia fields. The gas flows from the producing wells in practically all instances by its natural pressure into what are known as field lines, and from these it passes into larger lines known as gathering lines and from the gathering lines into transmission lines that carry it to Hastings Station. At various places both along its transmission lines, gathering lines and in some instances even along field lines it maintains pumping stations for the purpose and with the effect of facilitating the transmission of gas through the lines. At Hastings Station the gasoline vapors are removed from the natural gas by what is known as the "absorption method." In this the gas is passed through large vertical steel tanks known as "absorbers." The gas is introduced at the bottom and passes out at the top while oil vapors are introduced at the top, passed [fol. 42] through a series of baffle plates and collected at the bottom. This oil absorbs the gasoline vapors. The process is continuous and during it there is no interruption of the flow of gas. After the extraction of the gasoline vapors the gas is then passed through a pumping station which maintains a pressure of 200 to 300 pounds per square inch in the Hope Company's transmission lines on the discharge side leading from the Hastings Station to the Ohio River, the exact amount of the pressure being dependent upon the time of the year and East Ohio's demand for gas.

6. River Crossing and Delivery of West Virginia Gas.—The transmission lines of East Ohio hereinafter described extend from the Ohio River northward and at the river crossing the transmission lines of the Hope Company and East Ohio are connected by devices known as river crossings. These consist of a number of smaller pipes laid across the Ohio River and connected on each side with the larger

transmission lines. Each smaller line can be separately closed at either side of the river so that in the event of a washout or leak the continuance of the principal supply will not be imperiled. These river crossings were originally installed by the Hope Company which thereafter billed East Ohio and was paid by it for that proportion of the river crossings north of low water mark on the Ohio side of the Ohio River. The gas flows continuously from the Hope Company's transmission lines on the West Virginia side through the smaller pipes of the river crossings into East Ohio's transmission lines on the Ohio side of the Ohio River.

7. East Ohio's Transmission Lines.—East Ohio owns and operates four transmission lines running from the Ohio River northward to what is known as "Gross Farm Sta-[fol. 43] tion" in Stark County, Ohio. One of these, an 18 inch line, runs from what is known as "Pipe Creek Station" in Belmont County, Ohio, and the other three—one 18 inch line and two 20 inch lines—from what is known as "Clarington Station" in Monroe County, Ohio. From Gross Farm Station two pipe lines—one 14 inch and one 16 inch—run northeasterly to pressure reducing stations near Youngstown, Warren and Niles, one 10 inch pipe line runs north to a pressure reducing station near Akron, and South to stations near Canton and Massillon, and three other pipe lines—two 18 inch and one 20 inch—run to pressure reducing stations in Cuyahoga County. These transmission lines all carry West Virginia gas except that during the year 1929 a small amount of Ohio gas was introduced into the 10 inch line from which Akron, Canton and Massillon are supplied with West Virginia gas. The four transmission lines from the Ohio River to Gross Farm Station average 82 miles in length, the two from Gross Farm Station to Youngstown, 43 miles in length, and the three from Gross Farm Station to Cuyahoga County stations 40 miles in length. A map showing these transmission lines is incorporated herein as "Appendix B." The West Virginia gas leaves Hastings Station at a pressure varying between 200 to over 300 pounds, which is sufficient to transport it to East Ohio's consumers. East Ohio maintains no pumping stations for the transportation of West Virginia gas. The gas flows northward in the transmission system hereinbefore described until it reaches pressure reducing stations at which point the transmission lines are connected

with the high pressure distribution lines that are a part of the distribution system in each municipality served.

8. Ohio Gas.—East Ohio procured about one-fourth of its supply during the years 1927, 1928 and 1929 from its own [fol. 44] producing fields, principally in Knox, Holmes, Wayne, Summit, Medina and Cuyahoga Counties, Ohio. The gas from Medina and Cuyahoga Counties is transported by a number of small transmission lines and introduced at various places into the Cleveland metropolitan district high pressure distribution system. The gas from Knox, Holmes, Wayne and Summit Counties is carried by transmission lines to a pressure reducing station about 4 miles west of Akron from which point one line carries it to Akron and another line without passing through the pressure reducing station carries it north to a pressure reducing station in Cuyahoga County.

9. Pennsylvania Gas.—The Peoples Gas Company, hereinafter for convenience sometimes called "Peoples Company," is a natural gas company organized and existing under the laws of Pennsylvania with producing fields in that state. It collects its supply of natural gas in Pennsylvania by the same means as those of the Hope Company hereinbefore described and transports it to what is known as "Darlington Station" located in Pennsylvania approximately 8 miles east of the Ohio-Pennsylvania line where, after the removal of gasoline vapors, it is pumped to a pressure of 100 to 300 pounds per square inch, sufficient to carry it to East Ohio's consumers' appliances, and transported by it to the Pennsylvania-Ohio state line. At that point the Peoples Company's transmission line is connected with a similar transmission line of East Ohio through which the gas then passes to Youngstown and neighboring communities. During the years 1927, 1928 and 1929 East Ohio purchased approximately 3% of its supply of natural gas from the Peoples Company, all gas being measured by meters maintained by the Peoples Company in Pennsylvania near the Ohio line and payment for gas being made on the basis of such meter readings.

[fol. 45] 10. Method of Distribution to Consumers.—At the pressure reducing stations located on the outskirts of the various municipalities served, the gas passes from the transmission lines through regulators into the high pres-

sure lines that are a part of the distribution system in each municipality served. These regulators are set at the number of pounds pressure it is desired to maintain in the high pressure distribution lines—30 to 50 pounds per square inch depending on the size of the municipality and the demand for gas. These regulators automatically permit a faster or slower flow of gas from the transmission lines into the high pressure distribution lines to maintain in them the pressure at which regulators are set and gas is constantly flowing through these regulators at a slower or faster rate depending upon demand. In those communities hereinafter specified where mixed Ohio and West Virginia gas is served the commingling of the gas occurs in the high pressure distribution lines. From the high pressure distribution lines the gas then enters in each municipality the low pressure distribution lines where the pressure is again reduced to the number of ounces necessary to provide adequate pressure to consumers' appliances. Between the high pressure and low pressure distribution lines are other regulators precisely similar in their operation to those hereinbefore described which maintain the number of ounces on the low pressure lines at which they are set by allowing a slower or faster flow of gas, depending upon demand. Gas at the pressures carried in the transmission and high pressure distribution lines is unsuitable for use by domestic consumers. From the low pressure lines the gas passes directly through service lines from the street mains to consumers' meters and appliances. Service lines are installed [fol. 46] at the expense of and are owned by the property owner. At or near the connection of each street main with the service line is a stopcock under the control of East Ohio for shutting off and turning on the supply. Stopcocks by which the consumer can control the flow of gas are also located on the inlet side of the meter and at consumers' appliances. Gas in the service lines is stationary at such times as the consumers' appliances are not in use. The number of East Ohio's consumers is constantly changing. Changes of residence by consumers require the shutting off of gas at the old location and turning on at the new location. Likewise a consumer moving out of the municipalities served by East Ohio requires the gas to be turned off at the location served until a new occupant moves in when service is re-

sumed. While these changes are frequent over the entire system the total number served is constantly increasing. The pipes in the high pressure distribution systems of the various municipalities vary in size from 2 inches to 20 inches in diameter, in the low pressure distribution systems from 2 inches to 30 inches in diameter, and the service lines for domestic consumers from 1 inch to 3 inches in diameter and for industrial consumers from 1½ inches to 8 inches in diameter.

10-A. Relationship Between East Ohio and Its Consumers.—In the principal municipalities served by it East Ohio maintains local offices, and each domestic consumer in order to secure gas is required to sign there an application blank in substantially the following form:

"I, —— ——, hereby make application to The East Ohio Gas Company for natural gas to be supplied to the above premises, occupied as a —, and agree to pay for the same promptly at the rate fixed by the Company's ordinance and in accordance with the Rules and Regulations of the Company, subject to line extension.

[fol. 47] "I also agree to observe all of the Rules and Regulations of the Company; to pay for all gas used on said premises until forty-eight (48) hours after notice, in writing, has been duly given at the office of the company to discontinue the supply; to pay any charges in connection with setting and/or turning on meter; to permit the agents of the Company to have free access to the gas meter, pipes and connections at any time and to remove the meter for any purpose; and upon failure to comply with any of the Rules and Regulations of the Company, or for any indebtedness whatsoever, to permit the agents of the Company to sever connections with the gas service."

The amount of gas consumed by each consumer is determined by meter readings made monthly, the meters being located on the consumer's premises. East Ohio's rate schedules in many of the municipalities served by it provide for a service charge to be paid each month in addition to the price of gas. In a few municipalities there is no service charge but in lieu thereof a minimum charge is in effect, by which a consumer is required to pay a certain sum whether the amount of gas represented thereby at the scheduled rate

equals that amount or not, or whether the consumer uses any gas. East Ohio in the various communities served by it has employes whose duty it is to make connections and disconnections, turn on and turn off the gas, maintain and replace mains and service pipes, as the necessities of its business require. In a few of the municipalities served, East Ohio sells various appliances for the utilization of natural gas.

11. East Ohio's Report of Gross Receipts.—On or before August first in each of the years 1927, 1928 and 1929 East Ohio reported to the Tax Commission of Ohio, as required by the Statutes of Ohio, on forms approved by said Commis- [fol. 48] sion, the amount of its gross receipts for the year ending April 30th preceding, as follows:

	1927	1928	1929
Entire receipts from intra-state business (exclusive of business done for the Federal Government)	6,831,811	8,592,528	9,525,176
Intra-state business done for Federal Government	404	466	519
Entire receipts from interstate business (exclusive of business done for the Federal Government)	20,799,907	20,374,214	20,643,916
Interstate business done for Federal Government	1,398	1,341	1,262
Total	27,633,520	28,968,549	30,170,873

Subject to a correction of figures, hereinafter noted in paragraph 16 hereof, the receipts so reported as receipts from interstate business were the receipts from the sale of gas purchased from the Hope Company and the Peoples Company and sold by East Ohio in Ohio, and the receipts so reported as receipts from intra-state business were receipts from the sale of gas produced or purchased and sold by East Ohio in Ohio as well as miscellaneous receipts from business other than the sale of natural gas. The receipts reported as business done for the Federal Government were receipts from the sale of gas to United States post offices and hospitals. East Ohio accompanied the report of 1927 to the Tax Commission with a letter, a true copy of which is marked "Exhibit A," attached to and made a part of the Bill of Complaint. Prior to the year 1927 for some years East Ohio reported and paid the excise tax on its entire gross receipts irrespective of the source of supply from which the gas it sold to consumers was received.

12. Original Determination and Payment of Tax.—In each of the years 1927, 1928 and 1929 the Tax Commission of Ohio, acting pursuant to the Statutes of Ohio, fixed the intra-state gross receipts of the complainant and certified the same to the Auditor of State in the following amounts:

[fol. 49] Intrastate Gross Receipts

1927	$6,831,811
1928	8,592,528
1929	9,525,176

Thereafter in each year the Auditor of State computed the tax on the gross receipts so certified to him at the rate of one and thirty-five one-hundredths per cent and certified the tax so computed to the Treasurer of State who rendered statements therefor to East Ohio. Thereafter in each year and prior to December fifteenth, the last day provided by law for the payment of the same, East Ohio paid said excise taxes to the Treasurer of the State of Ohio. The amount of taxes so computed, certified, billed and paid was:

1927	$92,229.45
1928	115,999.13
1929	128,589.88

True copies of said bills from the Treasurer of the State of Ohio, and of the checks in payment of the same are marked Exhibits "B-1a", "B-1b", "B-2a", "B-2b", "B-3a", and "B-3b", attached to and made a part of the Bill of Complaint.

13. The Tax Commission's Order of 1930.—On January 13, 1930, the Tax Commission of Ohio made the following order:

"In the Matter of Omitted Amounts of Certain Public Utilities

"The Commission this day proceeding to review the amounts heretofore found by it to have been omitted by certain public utilities as named in Duplicate No. 401, and said companies having been notified of the amounts so fixed as aforesaid and offered opportunity to be heard in the matter

of such omitted amounts of gross receipts, and having care-
[fol. 50] fully and fully considered all facts submitted and all other facts and information coming to its knowledge, orders that the amounts of such omitted gross receipts be and the same are finally fixed and determined to be the amounts as set out in the accompanying schedule; and further orders that the schedule be certified to the Attorney General with the request that he institute such action as may be proper or necessary in the Court of Common Pleas of Franklin County or of any county in which such companies are doing business or own property for the collection of such fees and penalties."

In the schedule accompanying said order the Tax Commission of Ohio found and certified what it designated as "omitted gross receipts" of East Ohio as follows:

1927	$20,799,907
1928	20,376,021
1929	20,643,916

Said order of January 13, 1930, was certified to the Auditor of State by the Tax Commission of Ohio and on or about the same date said auditor computed the excise taxes thereon at the rate of one and thirty-five one-hundredths per cent, together with penalties of fifteen per cent, and delivered the same to the Attorney General of Ohio for collection. The amount of taxes and penalties so certified for collection are as follows:

1927 excise tax	$280,798.74	
Penalty	42,119.81	
		$322,918.55
1928 excise tax	275,076.28	
Penalty	41,261.44	
		316,337.72
1929 excise tax	278,692.87	
Penalty	41,803.93	
		320,496.80
		959,753.07

[fol. 51] 14. Demand for Payment of Additional Tax.—On or about January 16, 1930, the Attorney General of

Ohio notified East Ohio that the amounts hereinbefore set forth had been certified to him for collection and demanded immediate payment thereof. A true copy of such notice and demand is marked "Exhibit C", attached to and made a part of the Bill of Complaint.

15. Application for a Rehearing.—On March 13, 1930, and within sixty days from the date of said order of January 13, 1930, East Ohio duly filed with the Tax Commission of Ohio an application for a review and rehearing of said order as permitted by General Code Section 5517 and thereafter the same was denied by the Tax Commission of Ohio. A true copy of the order denying said application is marked "Exhibit D", attached to and made a part of the Bill of Complaint.

16. Corrected Statement of East Ohio's Gross Receipts.—At the time of the filing of the annual reports with the Tax Commission the division of gross receipts therein made between intra-state business and interstate business was made by apportioning all of East Ohio's receipts from the sale of gas in Ohio on the basis of the total quantities of West Virginia and Pennsylvania gas purchased and the total quantity of gas produced and purchased in Ohio. However, a number of municipalities were supplied entirely during the years in question with Pennsylvania or West Virginia gas, others entirely with Ohio gas and in others mixed Ohio and West Virginia gas was used. In addition, receipts of East Ohio from service and minimum charges were treated as receipts from the sale of gas whereas East Ohio now admits these receipts to be intra-state receipts. A corrected statement of gross receipts on this basis is as follows:

[fol. 52]	1927	1928	1929
Receipts from sales to consumers supplied 100% with West Virgina gas.	$7,361,348	$8,174,145	$6,114,965
Receipts from sales to consumers supplied 100% with Pennsylvania gas.	874,586	778,162	790,488
Receipts from West Virginia gas sold in municipalities where Ohio and West Virginia gas is mixed	11,180,408	9,919,192	12,221,751
Receipts from business done for the Federal Government	1,802	1,807	1,781
Receipts from sale of Ohio gas and other intra-state business	8,215,381	10,095,243	11,042,088
Total Gross Receipts	$27,633,520	$28,968,549	$30,170,873

Mixed Ohio and West Virginia gas is sold in Akron, Cleveland and some other municipalities in the Cleveland metropolitan district and during the year 1929 for a short time in Canton and Massillon.

Transmission lines convey separately the Ohio and West Virginia gas to the high pressure distribution lines serving these communities and the gas from the two sources is commingled in the distribution systems. The receipts given above as "Receipts from West Virginia gas sold in municipalities where Ohio and West Virginia gas is mixed" are that proportion of the yearly gross receipts of East Ohio from the sale of gas in the municipalities served with mixed Ohio and West Virginia gas represented by the percentage of West Virginia gas put into the distribution systems of those communities each year, such gas as well as the Ohio gas being separately measured at border meters at the time of its introduction into the distribution systems.

A detailed statement of the apportionment of receipts from the sale of this gas is as follows:

[fol. 53]

1927

Cities served with mixed Ohio & W. Va. gas	Per cent Ohio gas	Per cent W. Va. gas	Gross receipts from Ohio gas	Gross receipts from W. Va. gas
Cleveland City	23.338	76.662	$2,732,704.24	$8,976,543.52
Lakewood	23.338	76.662	263,886.96	866,530.99
Garfield Heights	23.338	76.662	37,522.46	123,255.93
Newburgh Heights	23.338	76.662	7,774.38	25,537.72
Cuyahoga Heights	23.338	76.662	1,465.14	4,812.79
Brooklyn Heights	23.338	76.662	2,565.27	8,426.54
Fairview	23.338	76.662	6,434.63	21,136.83
North Olmstead	23.338	76.662	3,728.18	12,246.56
Rocky River	23.338	76.662	10,488.40	34,452.89
Bratenahl	23.338	76.662	13,230.62	43,460.69
Akron	49.062	50.918	1,025,343.73	1,063,696.55
			4,105,144.01	11,180,403.01

1928

Cities served with mixed Ohio & W. Va. gas	Per cent Ohio gas	Per cent W. Va. gas	Gross receipts from Ohio gas	Gross receipts from W. Va. gas
Cleveland City	28.607	71.393	$3,322,440.36	$8,291,641.36
Lakewood	28.607	71.393	315,530.68	787,453.4[illegible]
Garfield Heights	28.607	71.393	54,723.53	136,570.68
Newburgh Heights	28.607	71.393	9,239.79	23,059.25
Cuyahoga Heights	28.607	71.393	14,210.26	35,463.81
Brooklyn Heights	28.607	71.393	6,033.15	15,056.61
Fairview	28.607	71.393	8,293.46	20,697.54
North Olmstead	28.607	71.393	4,667.79	11,649.15
Rocky River	28.607	71.393	14,393.79	35,921.84
Bratenahl	28.607	71.393	17,226.79	42,991.78
Akron	78.922	21.078	1,942,110.45	518,686.85
			5,708,869.96	9,919,192.36

1929

Cities served with mixed Ohio & W. Va. gas	Per cent Ohio gas	Per cent W. Va. gas	Gross receipts from Ohio gas	Gross receipts from W. Va. gas
Cleveland City	30.212	69.788	$3,663,583.23	$8,462,668.68
Lakewood	30.212	69.788	328,151.36	758,010.98
Garfield Heights	30.212	69.788	65,129.50	150,445.44
Newburgh Heights	30.212	69.788	9,081.24	20,977.12
Cuyahoga Heights	30.212	69.788	30,165.34	69,680.21
Brooklyn Heights	30.212	69.788	3,931.30	9,081.07
Fairvew	30.212	69.788	9,571.65	22,109.97
N. Olmstead	30.212	69.788	4,936.19	11,402.32
Rocky River	30.212	69.788	18,538.42	42,822.68
Bratenahl	30.212	69.788	18,153.57	41,933.71
Akron	91.377	8.623	2,372,493.92	223,885.33
Canton	3.735	96.265	75,263.85	1,939,832.60
Massillon	5.290	94.701	26,237.35	468,900.43
			6,625,256.92	12,221,751.04

[fol. 54] East Ohio has no available records showing the exact proportion in which gas from the two sources is commingled on any given date, either in the several municipalities or as served to individual consumers therein. Upward sliding scale rates are in force in all these municipalities and while there is some variation in the rate structures the average price per thousand cubic feet for all gas sold in these separate municipalities is practically the same.

The receipts listed as "Receipts from business done for the Federal Government" are receipts from sales of gas to United States post offices and hospitals and are admittedly not subject to the excise tax.

The receipts listed as "Receipts from sale of Ohio gas and other intra-state business" include all receipts from service and minimum charges, all receipts from the sale of gas in municipalities served entirely with Ohio gas and the apportioned receipts from communities served with mixed Ohio and West Virginia gas represented by the percentage of Ohio gas put into the distribution systems each year in those communities. In addition this item includes miscellaneous revenues of East Ohio from rental of buildings and other income.

A comparison of the receipts designated as intrastate business, exclusive of business done for the Federal Government, as originally reported to the Tax Commission and as now corrected is as follows:

	1927	1928	1929
As corrected	$8,215,381	$10,095,243	$11,042,038
As reported	6,831,811	8,592,528	9,525,176
Difference	1,383,570	1,502,715	1,516,862

Since the institution of this suit East Ohio has paid the additional excise taxes shown by this comparison to be due [fol. 55] for the years 1927, 1928 and 1929 in the following amounts:

	Tax
1927	$18,678.19
1928	20,296.65
1929	20,477.64

17. East Ohio Property Taxes.—In addition to the excise taxes paid by East Ohio for the three years in question, real and personal property owned by it in the State of Ohio in connection with the conduct of its business was assessed by local taxing authorities and by the Tax Commission of Ohio, and property taxes were levied thereon and paid by East Ohio as follows:

	Assessed value of real estate and buildings	Assessed value of personal property	Assessed value of all property	Taxes paid	Average rate
1927	$3,668,760	$41,871,570	$45,540,330	$1,008,610	2.21%
1928	3,717,470	42,889,900	46,607,370	1,044,917	2.24%
1929	3,672,450	44,079,350	47,751,800	1,108,628	2.32%

18. Enforcement of Tax.—The defendants named in the Bill of Complaint expect to and will unless restrained by order of this Court exercise the powers respectively conferred upon them by the Statutes of the State of Ohio to enforce against and collect from The East Ohio Gas Company the taxes and penalties for which demand has been made upon East Ohio for the years 1927, 1928 and 1929 as hereinbefore set forth.

Tolles, Hogsett & Ginn and William B. Cockley, Attorneys for Complainant. Gilbert Bettman, Attorney General of Ohio; Lewis F. Laylin, Chief Counsel for the Attorney General, Attorneys for Defendants.

[fol. 56] APPENDIX "A" TO AGREED STATEMENT OF FACTS

Gas Purchase Agreements

Hope Natural Gas Company & The East Ohio Gas Company

Original Agreement—March 1, 1910

This agreement, made and entered into this 1st day of March, A. D. 1910, by and between the Hope Natural Gas

Company, a West Virginia corporation, hereinafter called the "Hope Company," party of the first part, and The East Ohio Gas Company, an Ohio corporation, hereinafter called the "Ohio Company," party of the second part,

Witnesseth: Whereas, the Hope Company is the owner of natural gas wells, gas rights and leases for gas purposes in the State of West Virginia, and is the owner of pipe lines extending from its natural gas territory in the State of West Virginia to the boundary of the State of Ohio on the Ohio River; and

Whereas, the Ohio Company holds franchises and distributing systems for the distribution of natural gas in the City of Cleveland and other cities, villages and towns in the State of Ohio, and is the owner of three trunk lines extending from the boundary of the State of Ohio on the Ohio River, through the State of Ohio to the City of Cleveland, and connecting with distributing systems owned by the said Ohio Company in the City of Cleveland, and in various cities, villages and towns in the State of Ohio:

Now, therefore, in consideration of the premises and of the mutual covenants and agreements herein contained, the parties hereto have agreed and do hereby agree as follows:

[fol. 57] First. It is mutually understood and agreed that all the rights of the parties hereto in respect to natural gas sold and delivered by the Hope Company to the Ohio Company on and after March 1st, 1910, shall be ascertained and determined by and in accordance with the provisions of this agreement.

Second. The Hope Company undertakes and agrees during the continuance of this contract to sell and deliver to the Ohio Company and the Ohio Company undertakes and agrees to purchase and take from the Hope Company—

(a) All the natural gas requisite for the supply of the domestic consumers of the Ohio Company;

(b) Such amounts of natural gas as may be requisite to fulfill contracts made with the consent and approval of the Hope Company by the Ohio Company, or companies which it supplies with natural gas, for the sale of gas upon special terms and conditions for manufacturing purposes;

provided, however, that the Hope Company shall not be obligated to sell and deliver or the Ohio Company to purchase and take gas in excess of the amounts currently required for the purposes aforesaid, or in excess of the amount which can be transported through the trunk lines of the Ohio Company as at present constructed under a pressure of 225 pounds at the Ohio River and that the Hope Company cannot be required to deliver gas in excess of the amount which it has available for delivery as defined in the Seventh Paragraph hereof.

The Ohio Company further undertakes and agrees that if at any time its requirements of natural gas for the purposes aforesaid exceed the amount which can be transported through its trunk lines from the Ohio River as at present constructed, it will purchase such excess from the Hope [fol. 58] Company on the terms herein stated to the extent that the Hope Company is willing and able to furnish the same, and the trunk lines of the Ohio Company from the Ohio River are then sufficient to transport the same, provided, however, that if at any time the Ohio Company shall give written notice to the Hope Company of its intention to increase by new construction the then existing capacity of its pipe lines from the Ohio River within one year from the date of such notice by an amount designated in such notice and does so increase its pipe line capacity within such year, the Hope Company shall not be entitled to require the Ohio Company to purchase and take natural gas hereunder in excess of the capacity of the trunk lines from the Ohio River as they existed prior to such increase under a maximum pressure of 225 pounds at the Ohio River, unless within sixty days after the receipt of such written notes, it serves on the Ohio Company written notice that for the purposes of this agreement the capacity of the trunk lines from the Ohio River as increased by such additional construction under a maximum pressure of 225 pounds at the Ohio River shall be substituted for the existing capacity of said trunk lines.

Third. It is mutually understood and agreed that the natural gas to be sold and delivered hereunder shall be delivered by the Hope Company to the Ohio Company at the boundary line between the State of Ohio and the State of West Virginia at the points where the lines of the Hope

Company now connect with the trunk lines of the Ohio Company, or at such other points as may be mutually agreed upon between the parties hereto.

Fourth. It is further mutually understood and agreed that no dominion or control over the natural gas delivered under this contract shall remain in the Hope Company after [fol. 59] the gas passes the points of delivery above stated, nor shall the Hope Company be responsible for or on account of anything that may thereafter be done, happen or arise touching said gas; and the Ohio Company undertakes and agrees that it will at all times and from time to time keep free, save harmless and indemnify the Hope Company from any and all manner of claims, suits and damages on account of any contract, act or thing touching the said gas after it has left the said point of delivery.

Fifth. The Hope Company undertakes and agrees subject to the provisions of Paragraph Seventh hereof that all times during the continuance of this contract it will maintain in good order and condition all its compressing stations, pipe lines, connections and other facilities in the State of West Virginia in order to enable it to carry out its obligations under this contract, and to deliver gas hereunder in such volume as to maintain a pressure equivalent to 225 pounds at the junction point of its lines with the lines of the Ohio Company as at present constructed and operated at the Ohio River; and will use due and reasonable diligence in developing its gas leases and properties in the State of West Virginia and in obtaining gas therefrom for the purpose of fulfilling its obligations hereunder, and will, if and when required so to do by the Ohio Company, deliver the gas to be supplied by it hereunder at a pressure equivalent to 225 pounds at the Ohio River end of the trunk lines of the Ohio Company as at present constructed.

Sixth. It is mutually understood and agreed that where either party to this contract fails to perform any obligation herein assumed by it, and such failure is due to Acts of God, or a public enemy, strikes, riots, injunctions, or other interferences through legal proceedings, breakage or acci- [fol. 60] dent to machinery or lines of pipe, washouts, earthquakes, storms, freezing of lines, or wells, sudden or unforeseen failure of gas wells, or to any cause not due to the fault

or neglect of such party, or is caused by the necessity for making repairs or alterations in machinery or lines of pipe, such failure shall not be deemed to be a violation by such party of its obligations hereunder, but such party shall use due diligence to again put itself in position to carry out all of the obligations which by the terms hereof, it has assumed.

Seventh. It is further understood and agreed between the parties hereto that this contract shall continue, unless previously terminated by mutual consent of the parties hereto, so long as the Hope Company produces gas in marketable quantities from the gas fields owned or leased by it in West Virginia, but that the Hope Company reserves the right to make and enter into contracts with other companies for the sale to such companies of natural gas and in the ordinary course of its business to sell and dispose of the gas properties now or hereafter owned or leased by it; but it is understood and agreed that the Hope Company is obligated to deliver gas for domestic consumers of the Ohio Company in preference to all other consumers, or persons, firms and corporations distributing gas under contracts with the Hope Company, excepting only the domestic consumers on the lines of the Hope Company in West Virginia, and the consumers paying domestic rates upon the distributing systems owned or supplied with gas by The Peoples Natural Gas Company which is now obtaining gas from the Hope Company; and that in case at any time during the continuance of this contract the natural gas produced in the gas fields then owned and leased by the Hope Company is not suffi- [fol. 61] cient to fill the requirements of domestic consumers on distributing systems which at such time are purchasing natural gas from the Hope Company, the Ohio Company shall not be entitled to require the Hope Company to supply to it under this contract a greater amount of natural gas than the proportion of the natural gas produced by the Hope Company from the properties then owned or leased by it, which the number of domestic consumers supplied by the Ohio Company bears to the total number of domestic consumers on the distributing systems owned or supplied by the Ohio Company and the consumers paying domestic rates on distributing systems owned or supplied with gas by The Peoples Natural Gas Company, and that the domestic consumers of the Hope Company in West Vir-

ginia may at all times be supplied in full by the Hope Company, so that, for the purposes of this contract, the gas produced by the Hope Company will be the total amount produced by it after deducting the amount requisite for the supply of its domestic consumers in West Virginia.

Eighth. It is mutually understood and agreed that the Ohio Company shall keep the Hope Company at all times fully informed of all facts tending to show the amount of natural gas which will be necessary from time to time to supply its requirements hereunder, and that so long as the Hope Company exercises due diligence in making provision to supply or does supply the amount of natural gas estimated to be necessary to meet such requirements, it shall not be liable by reason of its failure to supply gas in excess of said estimated amount.

Ninth. The Ohio Company undertakes and agrees at all times during the continuance of this contract that the trunk lines from the Ohio River to the City of Cleveland and all branches therefrom and the various distributing systems [fol. 62] connected therewith will be kept in good order and condition, so as to reduce, as far as possible, the waste and escape of gas, and that all gas supplied by it to domestic consumers or for manufacturing purposes shall be measured by standard meters which it will install and keep in good order and condition, and that all gas supplied to consumers by companies to which it sells gas shall be measured by similar meters, which, together with all other pipe and appliances of such companies, the Ohio Company agrees shall be kept in good order and repair; that all of said meters used for measuring gas sold for domestic purposes shall be read at least once in each calendar month and that meters used for measuring gas sold for manufacturing purposes pursuant to the provisions hereof, shal be read daily and that reports of the readings of all meters shall be furnished monthly to the Hope Company. The amount of gas sold for lighting streets where measurement by meter is impracticable, shall be estimated monthly as accurately as practicable, and the amount of such monthly estimates and the basis upon which each of said estimates is made shall be reported monthly to the Hope Company.

Tenth. The Ohio Company further undertakes and agrees that the Hope Company shall at all times through its agents

and representatives have access to all meters used by the Ohio Company or by companies to which it sells gas to measure the amount of gas sold to consumers, whether for domestic purposes or for manufacturing purposes, and to all pipes, appliances and apparatus used by such companies in transporting, distributing and delivering gas, with the right to require the Ohio Company to examine, test and repair such meters, pipes and apparatus; on the refusal, delay or failure of the Ohio Company so to do, the Hope [fol. 63] Company, by its duly authorized agents and employes, shall have access to such meters, pipes, appliances and apparatus, with the right to examine, test, repair and replace the same (in workmanlike manner as it would its own meters and appliances) but at the cost of the Ohio Company; the Hope Company by its properly accredited representatives shall also at all times have the right to examine the books of account of the Ohio Company and of each of the companies to which the Ohio Company supplies natural gas, so far as said books of account in any way relate to the purchase or distribution of natural gas.

Eleventh. It is mutually understood and agreed that for the purposes of this contract "gas sold for domestic purposes" and "gas sold to domestic consumers" shall be deemed to include all gas sold for household use or at the same rates and upon the same terms and conditions upon which gas is sold for household use; also gas sold to churches, schools and similar institutions at reduced rates but for the same purposes and upon the same terms and conditions for which and upon which gas is sold for household use; also gas sold for street lighting; and that the terms "manufacturing gas" and "gas sold for manufacturing purposes" shall be deemed to include all gas, other than as aforesaid, sold upon special terms and conditions; it is also agreed that where this contract uses the words "consumers of the Ohio Company," or "consumers supplied by the Ohio Company," such words or terms include also consumers of local distributing companies supplied with gas by the Ohio Company.

Twelfth. Any gas that may be used by the Ohio Company or any company which it supplies with natural gas, for the operation of compressing stations or other plants owned by it, or for lighting or heating its own buildings, shall be

[fol. 64] deemed to be gas sold for domestic purposes, at the prevailing domestic rates, unless a special agreement is made in reference thereto with the Hope Company.

Thirteenth. Notwithstanding anything in this contract contained, the Ohio Company may continue to market the gas from certain wells in Mahoning County in the State of Ohio now being operated by it, but such gas is to be measured before commingling in a manner satisfactory to the Hope Company and is to be deemed, for the purposes of this contract, as gas delivered for manufacturing purposes at the average rate currently charged per month for manufacturing purposes and deducted at that rate from the monthly settlements with the Hope Company.

All contracts made by the Ohio Company or companies supplied by it with gas for the sale of gas for manufacturing purposes shall be submitted to the Hope Company and, if approved by the Hope Company, the provisions of this contract shall apply thereto; if, however, any of said contracts are not approved by the Hope Company, the Ohio Company shall be under no obligation to purchase and take from the Hope Company, nor shall the Hope Company be under any obligation to sell and deliver to the Ohio Company, the amount of gas requisite to fulfill the same, and this contract shall in no wise restrict the right of the Ohio Company to enter into such contracts and to purchase and supply from other sources the natural gas requisite for the fulfillment of the contracts which the Hope Company has not approved.

When the production of the Hope Company shall have declined so that the amount of gas available for delivery hereunder during January and February will not maintain a pressure of 225 pounds at the Ohio River on the lines of [fol. 65] the Ohio Company as now constructed, and will not supply the amount of gas requisite for the domestic consumers of the Ohio Company during such months, the amount of gas which the Ohio Company shall be obligated to purchase and take from the Hope Company and the Hope Company to sell and deliver hereunder on account of domestic consumption after any January and February in which there is such a deficiency in the available supply, may, at the option of the Ohio Company, be limited to the proportion that the amount delivered by the Hope Company

during said months of January and February bears to the amount which was required by said Ohio Company in said months for the supply of its domestic consumers (not exceeding, however, the amount which could have been transported under the pressure as aforesaid). Said option shall be exercised on or before June 1st by written notice from the Ohio Company to the Hope Company.

Notwithstanding the exercise of such option, the provisions of Paragraph Sixteenth hereof shall nevertheless continue applicable for the purpose of determining the price to be paid for gas actually delivered by the Hope Company.

Fourteenth. It is mutually understood and agreed that the requirements of domestic consumers of the Ohio Company shall be fully supplied from the gas delivered hereunder in preference to manufacturers purchasing gas for manufacturing purposes, and that the Hope Company can be required to supply gas to be used for manufacturing purposes only where the same is sold under special contracts which have first been submitted to and approved in writing by the Hope Company and which expressly provide that natural gas will be supplied thereunder only in so far as the same is not necessary to meet the requirements of [fol. 66] domestic consumers supplied through pipe lines of the Ohio Company.

Fifteenth. The Ohio Company undertakes and agrees that it will pay to the Hope Company for natural gas sold and delivered to it by the Hope Company hereunder as follows:

(a) For all natural gas sold and delivered to the Ohio Company to enable it to meet the requirements of its domestic consumers and the domestic consumers of companies which it supplies with gas, fifty per cent. of the amounts payable by such consumers therefor, provided, however, that the minimum amount to be received by the Hope Company for each One Thousand cubic feet of natural gas supplied by it for domestic consumers shall not be less than as follows, to-wit:

From March 1st, 1910, to May 31st, 1918, inclusive, 15 cents;

From June 1st, 1918, to May 31st, 1920, inclusive, 17½ cents;

from and after June 1st, 1920, for each successive period of five years, a price not less than 110 per cent. of the highest price received by the Hope Company in the last preceding period of 5 years.

(b) For all natural gas sold and delivered to the Ohio Company to enable the Ohio Company, or companies which it supplies with gas, to fulfill conntracts made with the consent of the Hope Company for the sale of gas for manufacturing purposes, sixty per cent. of the amounts payable therefor by the manufacturers or other consumers by whom the same is purchased.

Sixteenth. It is mutually understood and agreed that whenever the Ohio Company, in addition to the gas purchased by it from the Hope Company, is obtaining gas from other sources (under the right as provided in the Thirteenth [fol. 67] Paragraph hereof), nevertheless, for the purpose of computing the amounts to be paid to the Hope Company hereunder, all gas sold by the Ohio Company for domestic consumers, shall, up to the full amount of gas supplied by the Hope Company, be deemed to be gas obtained from the Hope Company.

In all cases where gas is obtained from other sources and is commingled with gas obtained from the Hope Company prior to delivery to consumers, it is necessary that the gas obtained from the Hope Company, as well as the gas from other sources, shall be measured before such commingling takes place; it is agreed, therefore, that such measurement of the gas obtained from the Hope Company at such time shall be by Pitot tubes or other accurate devices of standard registering type as may be agreed upon, to be installed and maintained at the expense of the Hope Company as nearly as possible at the junction of the lines of the Hope Company with the lines of the Ohio Company, but on the West Virginia side of the Ohio River. The gas obtained from other sources shall be measured at the expense of the Ohio Company before the commingling takes place, in a manner satisfactory to the Hope Company; and the Ohio Company shall give the Hope Company 24 hours notice specifying the exact time when such gas will be turned into the lines of the Ohio Company.

The proportion of gas delivered to consumers that has been obtained from each source shall be determined as follows, viz:

(a) The Ohio Company shall ascertain the amount of gas obtained in each month from all sources and measured before commingling; the percentage by which such total exceeds the amount of gas payable for by all consumers as [fol. 68] measured by the regular reading of meters in the same month shall be used for the purposes of this contract as the "percentage of loss" for such month.

(b) If the amount of gas furnished by the Hope Company during any month as measured at the State Line, less the percentage of loss, exactly equals or exceeds the amount of gas payable for by domestic consumers to the Ohio Company for such month, then all gas payable for by such domestic consumers in such month shall be deemed to have been gas delivered by the Hope Company for domestic consumers at the rate stipulated in clause "a" of the fifteenth paragraph hereof; but if the amount of gas furnished by the Hope Company during any month as measured at the State Line, less the percentage of loss, is less than the amount of gas payable for by domestic consumers in such month, then the Hope Company shall be paid for all gas delivered in such month as measured at the State Line, less the percentage of loss, at the average rate payable by domestic consumers to the Ohio Company for such month.

(c) If the amount of gas furnished by the Hope Company during any month as measured at the State Line, less the percentage of loss, exceeds the amount of gas payable for to the Ohio Company in such month by domestic consumers, then such excess amount shall be the amount of gas furnished by the Hope Company for manufacturing purposes and shall be paid for at the rate stipulated for in clause "b" of the fifteenth paragraph hereof.

(d) If the amount of gas furnished from all sources in any month, as measured before commingling, is less than the amount of gas payable for in such month by all consumers to the Ohio Company (which is a probable condition in spring months), then the amount of gas to be paid for to

the Hope Company by the Ohio Company for such month shall be determined as follows:

[fol. 69] The percentage which the amount of gas furnished by the Hope Company measured at the State Line bears to the total amount of gas furnished by all sources, measured before commingling, shall be ascertained, and such percentage of the total amount of gas payable for by all consumers to the Ohio Company in such month shall then be computed; if the resulting computation is equal to or larger than the amount of gas payable for to the Ohio Company by domestic consumers for such month, then all gas payable for by domestic consumers to the Ohio Company for such month shall be deemed to be the gas delivered by the Hope Company at the rate set forth in clause "a" of the fifteenth paragraph hereof; and the excess of such resulting computation over the amount payable for in such month to the Ohio Company by domestic consumers, shall be deemed to be gas delivered by the Hope Company for manufacturing purposes at the rate set forth in clause "b" of the fifteenth paragraph hereof; if, however, the said computation is less than the amount of gas payable for to the Ohio Company in such month by domestic consumers, then the Hope Company shall be paid for all of the gas contained in such computation at the average rate per thousand cubic feet paid to the Ohio Company by domestic consumers in such months.

Seventeenth. Where gas is measured by Pitot tubes, meters or other devices, such measuring instruments shall be of a standard registering type and the gas shall be measured on a basis of 10 ounces pressure to the square inch above 14.4 pounds atmospheric pressure, according to Boyle's law for the measurement of gas at varying pressures, without correction for temperature of barometric conditions. Each company shall have full access to the measuring stations at all times with the right to keep an employe or employes there for the purpose of checking the [fol. 70] gas measurements; where Pitot tubes are used they shall be read at 15 minute intervals throughout each day of 24 hours, and duplicate statements of the daily readings shall be mailed daily to each party; where meters are used such meters shall be read by the Ohio Company

daily, or as often as the meters require, but each party shall have constant access to the meters.

If either party challenges the accuracy of any meter or other device in use under the sixteenth paragraph of this contract, and desires to have the meter or such device tested or repaired, the Ohio Company shall test and repair the same in the presence and to the satisfaction of the Hope Company, or a representative, if the Hope Company wishes to exercise the right to be present or to be represented at such test. Before taking out such meter or device for test or repairs, a correctly registering meter or other agreed device shall be set in its place, and adjustment and settlement for the inaccurate measurements by the defective meter shall be made at the regular monthly periods on the basis of the amount of gas registered at like pressures for like periods of time when the meter was registering accurately.

Eighteenth. The Ohio Company undertakes and agrees that on or before the 25th day of each month it will furnish to the Hope Company a detailed statement of the amount of gas charged to its domestic consumers during the preceding month, showing separately the amount so supplied in each city and town supplied by it either directly or through distributing companies; and the rates at which gas is sold in each of said cities and towns; the number of domestic consumers in each of said cities and towns; the amounts charged during the preceding month to each con- [fol. 71] sumer using gas for manufacturing purposes; whether any gas has been obtained from other sources; and if so the amount of gas obtained from the Hope Company and the amount of gas obtained from other sources determined as hereinbefore provided; and all such other data as the Hope Company may reasonably require or as may be necessary to enable the Hope Company to determine the amount which it is entitled to receive for gas supplied by the Hope Company to the Ohio Company and charge to consumers during the preceding month. The Ohio Company undertakes and agrees that it will pay in semi-monthly installments the amount due to the Hope Company for all gas delivered by the Hope Company to the Ohio Company during the preceding month; the first installment shall be paid on or before the 15th of the month and shall be 75

per cent. of the total amount due for the month, approximated as fairly as may be at the time by the Ohio Company; the second installment or balance shall be paid in full on the 27th day of the month; the Ohio Company also agrees that the amounts of gas charged to consumers during each month shall be true statements of the amounts actually delivered to consumers determined as is provided in Paragraph Ninth hereof.

Nineteenth. It is understood and agreed that the minimum price of fifteen cents per thousand cubic feet hereinabove provided for is based upon an assumed pressure not exceeding 8 ounces above atmospheric, and that in case of the delivery of gas to consumers at a pressure exceeding 8 ounces above atmospheric, the amount of gas to be charged to such consumers shall be increased proportionately to the increase in the density of the gas.

Twentieth. The Ohio Company covenants to use diligent effort to maintain and keep up its deliveries of natural gas under the spirit and intention of this agreement in order [fol. 72] that the natural gas which the Hope Company is prepared to deliver hereunder may find a continuous market.

Twenty-first. This contract shall be binding upon the parties hereto and their successors and assigns, respectively, provided, however, that in case the gas distributing system now or hereafter owned or controlled by the Ohio Company is broken up, so that parts thereof are vested in different owners, the Hope Company, at its option, shall have the right to terminate this contract.

In witness whereof the parties hereto have hereunto caused their corporate names to be signed by their respective Presidents or Vice Presidents and their respective seals to be hereunto affixed by their respective Secretaries the day and year first above written.

Hope Natural Gas Company, by John G. Pew, Vice-President. Attest: Christy Payne, Secretary. (Seal.) The East Ohio Gas Company, by M. B. Daly, President. Attest: H. V. Shulters, Secretary. (Seal.)

Supplemental Agreement—April 12, 1921

Agreement, made and entered into this 12th day of April, 1921, by and between Hope Natural Gas Company, a West Virginia corporation, party of the first part, and The East Ohio Gas Company, an Ohio corporation, party of the second part;

[fol. 73] Whereas, the party of the first part has represented to the party of the second part that owing to the depletion of the natural gas fields and increased cost of operations, it cannot produce and deliver natural gas to the party of the second part at the prices existing in the contract between the two companies dated the 1st day of March, 1910, and that it cannot expend the sums necessary to develop new fields and construct the pipe lines, compressor stations and other appliances to make the same available unless it receives an increase in rates; and

Whereas, upon investigation the party of the second part believes that the new prices proposed are just and reasonable and provide the only means by which any reasonable supply of gas can be obtained for the requirements of its consumers;

Now, therefore, this agreement witnesseth: That the parties hereto, for and in consideration of the premises and of the sum of one dollar each to the other in hand paid, the receipt of which is hereby acknowledged, have mutually covenanted and agreed and do hereby covenant and agree, that Paragraph Fifteenth of the said contract dated March 1, 1910, between the companies parties hereto, be and it is hereby modified to read as follows:

"Fifteenth. The Ohio Company undertakes and agrees that it will pay to the Hope Company for natural gas sold and delivered to it by the Hope Company, sixty (60) per cent. of the amounts payable by the consumers of the Ohio Company therefor, provided however, that for the year beginning May 1, 1921, the minimum average amount to be received by the Hope Company for each one thousand cubic feet of natural gas shall not be less than thirty (30) cents; for the year beginning May 1, 1922, shall not be less than [fol. 74] thirty-two and one-half (32½) cents; and for the period beginning May 1, 1923, and ending May 31, 1924, shall not be less than thirty-five (35) cents. The price to

be received after said last named date to be then adjusted upon an equitable basis, having reference to the then existing condition of the producing fields, the available supply of gas and the cost of producing the same."

It is also agreed that Paragraph Fifteenth as it now appears in said contract shall be and hereby is cancelled and annulled, the contract to be and remain in all other respects and as herein modified, in full force and effect.

Witness the common and corporate names and seals of the parties hereto duly affixed and attested by their proper officers the day and year first above written.

Hope Natural Gas Company. T. O. Sullivan, Vice-President. Attest: S. E. W. Burnside, Secretary. (Seal Hope N. G. Co.) The East Ohio Gas Company. M. B. Daly, President. Attest: C. W. Downing, Secretary. (Seal E. O. G. Co.)

Supplemental Agreement—April 30, 1924

Agreement made and entered into this 30th day of April, 1924, but to become effective as of June 1, 1924, by and between Hope Natural Gas Company, a West Virginia Corporation, Party of the First Part and The East Ohio Gas Company, an Ohio corporation, Party of the Second Part.

Whereas, under date of April 12, 1921, the parties hereto entered into a contract modifying paragraph Fifteenth of [fol. 75] a certain contract between the parties, bearing date March 1, 1910, and fixing the price at which the Hope Company should furnish natural gas to the East Ohio Company for the period ending May 31, 1924, and providing further that prices for natural gas after May 31, 1924 should be adjusted upon an equitable basis, having reference to the then existing condition of the producing fields, the available supply of gas and the cost of producing the same; and

Whereas, upon investigation the parties believe that the prices hereinafter named are upon an equitable basis, having referenec to the elements so referred to;

Now, therefore, this agreement witnesseth:

That the parties hereto, for and in consideration of the premises and of the sum of One Dollar ($1.00) each to the

other in hand paid, the receipt of which is hereby acknowledged, have mutually covenanted and agreed and do hereby covenant and agree:

First. That said paragraph Fifteenth of said contract of March 1, 1910, as modified by said agreement of April 12, 1921, be and it is hereby further modified to read as follows:

"Fifteenth. The Ohio Company undertakes and agrees that it will pay to the Hope Company for natural gas sold and delivered to it by the Hope Company for the year beginning June 1, 1924 and ending May 31, 1925, the sum of thirty-five cents (35c) per thousand cubic feet; for the year beginning June 1, 1925, and ending May 31, 1926, the sum of thirty-seven and a half cents (37½c) per thousand cubic feet; for the year beginning June 1, 1926 and ending May 31, 1927, the sum of forty cents (40c) per thousand cubic feet, and for the year beginning June 1, 1927 and ending May 31, 1928, the sum of forty cents (40c) per thousand cubic feet.

[fol. 76] The price to be received after said last named date to be then adjusted upon a like equitable basis, having reference to the then existing condition of the producing fields, available supply of gas and cost of producing same."

Second. That paragraph Sixteenth of said contract of March 1, 1910 be modified to read as follows:

"Sixteenth. It is understood that the Ohio Company, in addition to the gas purchased by it from the Hope Company, itself produces large quantities of gas and also purchases large quantities from others than the Hope Company, all of which gas is commingled for delivery to consumers on the Ohio Company's lines, and that the quantity of gas actually delivered by the Ohio Company to the consumers by reason of leakage and otherwise is normally less than the aggregate quantity of gas delivered into its lines from all sources.

It is agreed, in order to determine the quantity for which the Hope Company shall ultimately be paid, that the gas obtained from the Hope Company shall be measured before such commingling takes place, by Pitot tubes or other accurate devices of standard registered type as may be agreed

upon, to be installed and maintained at the expense of the Hope Company as nearly as possible at the junction of the lines of the Hope Company with the lines of the Ohio Company but on the West Virginia side of the Ohio River.

The gas produced by the Ohio Company and that purchased from other sources than the Hope Company shall be measured at the expense of the Ohio Company before such commingling takes place in a manner satisfactory to the Hope Company.

Provisional payments shall be made to the Hope Company from month to month in the same manner as at present, that is to say, the amount of gas produced and purchased by the Ohio Company, from others than the Hope Company, as measured before commingling, shall be deducted [fol. 77] from the amount of gas actually sold and delivered by the Ohio Company to its customers during the month, and the Hope Company be paid for the balance.

At the end of each year a final adjustment for the year shall be made so that the Hope Company shall ultimately receive pay for such percentage or proportion of the gas actually delivered during the year by The East Ohio Gas Company to its consumers as the measurements of gas delivered by Hope Company, taken before commingling, bear to the aggregate measurements of gas produced and purchased by the Ohio Company from all sources before such commingling, and final settlement for the year be made upon that basis. The year shall be taken as ending on May 31st, and final settlement for the year shall be made within thirty days thereafter."

It is further agreed that except as to said paragraphs Fifteenth and Sixteenth as now modified said contract of March 1, 1910 shall be and remain in full force and effect.

Witness the corporate names and seals of the parties hereto, duly affixed and attested by their proper officers, the day and year first above written.

Hope Natural Gas Company, by T. O. Sullivan, Vice-President. Attest: S. E. W. Burnside, Secretary.
The East Ohio Gas Company, by M. B. Daly, President. Attest: R. W. Brink, Secretary.

[fol. 78] Hope Natural Gas Company, William Penn Way, Pittsburgh, Pa.

John B. Corrin, Vice-President & Genl. Mgr.

May 26, 1928.

Mr. R. W. Gallagher, President the East Ohio Gas Company, Cleveland, Ohio.

Dear Mr. Gallagher: In view of the extended negotiations The East Ohio Gas Company is obliged to carry on with the City of Cleveland for a proposed new contract covering distribution of gas to consumers within the City, and which we appreciate makes it difficult for The East Ohio Gas Company to enter into a new contract with the Hope Natural Gas Company for the supply of gas by the Hope Company following the termination of the present agreement on May 31st, 1928, the Hope Natural Gas Company is willing to extend, and does hereby extend, for a period of three months from May 31st, 1928, the agreement dated April 30th, 1924 between the two companies which is a modification of the original agreement of March 1st, 1910, all terms and conditions of the present agreement to rule during the three months' extension hereby granted.

Yours very truly, Hope Natural Gas Company, by (Signed) John B. Corrin, Vice-President.

[fol. 79] Supplemental Agreement—September 1, 1928

Agreement made and entered into as of September 1, 1928, by and between "Hope Natural Gas Company," a West Virginia corporation, of the first part, and "The East Ohio Gas Company," an Ohio corporation, of the second part:

Whereas, under date of March 1, 1910, the parties hereto entered into a contract for the purchase and sale of natural gas, which contract has been modified and extended at various dates, the last modification and extension having expired on August 31, 1928; and

Whereas, it is necessary to agree upon the price for natural gas delivered after August 31, 1928; and

Whereas, The East Ohio Gas Company is not now in a position to determine its requirements for any definite

period, due to failure to secure a renewal of its contract with the City of Cleveland,

Now, therefore, this agreement witnesseth: That the parties hereto, for and in consideration of the premises and of the mutual promises contained in said agreement of March 1, 1910 and herein, have mutually covenanted and agreed, and do hereby covenant and agree that Paragraph Fifteenth of said contract of March 1, 1910, as modified by later agreements, be and it is hereby further modified to read as follows:

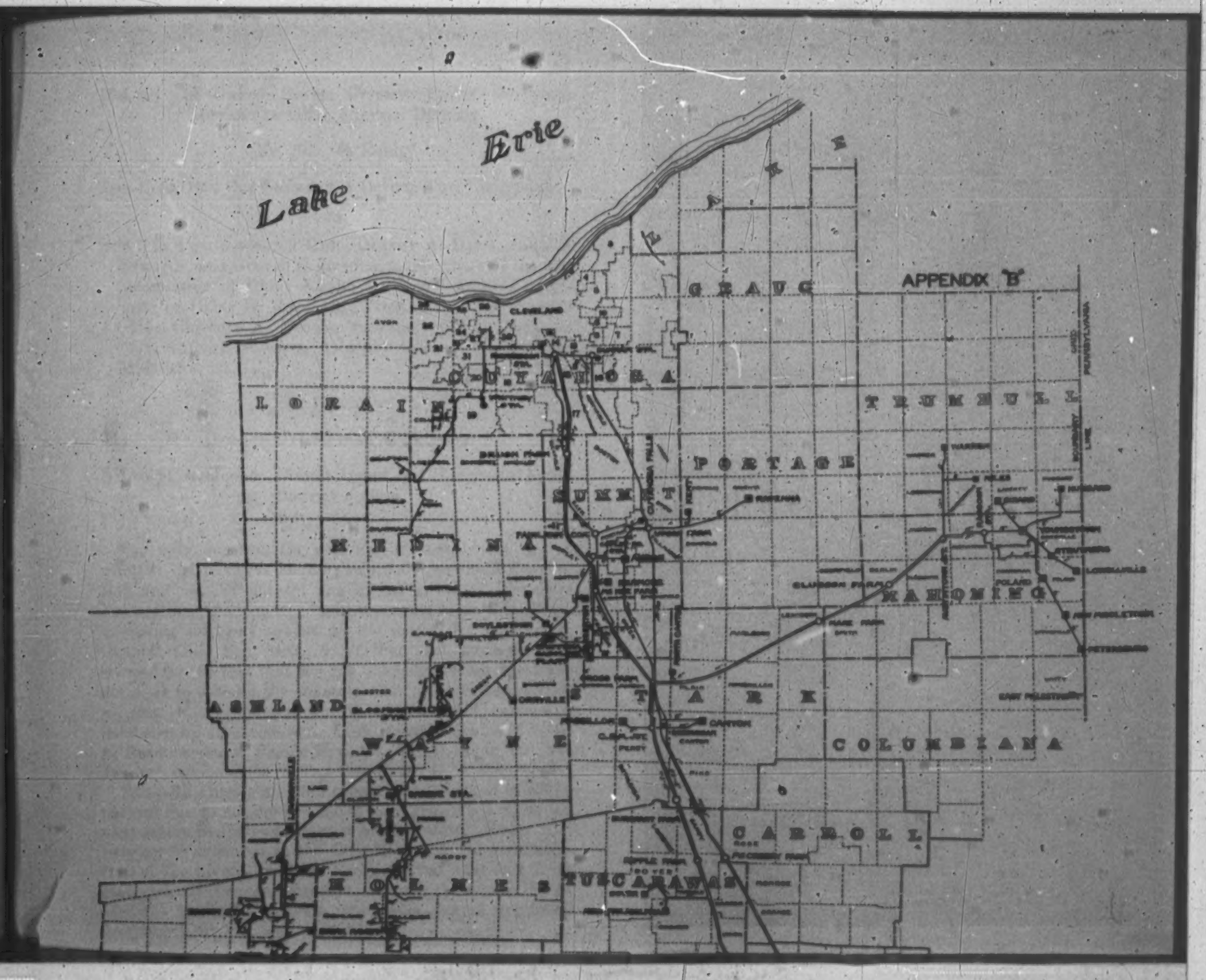
"Fifteenth. The Ohio Company undertakes and agrees that it will pay to the Hope Company for natural gas sold and delivered to it by the Hope Company on and after September 1, 1928, the sum of forty-one and eight tenths cents (41.8c) per thousand cubic feet, this price agreement to terminate at the end of any calendar month upon service of a written notice by either party upon the other at least thirty (30) days prior thereto. Upon such termination the [fol. 80] price to be received thereafter shall then be adjusted upon a like equitable basis, having reference to the then existing condition of the producing fields, the available supply of gas and the cost of producing same."

It is further agreed that except as to said Paragraph Fifteenth as now modified, said contract of March 1, 1910, with the present effective modifications thereof, shall be and remain in full force and effect.

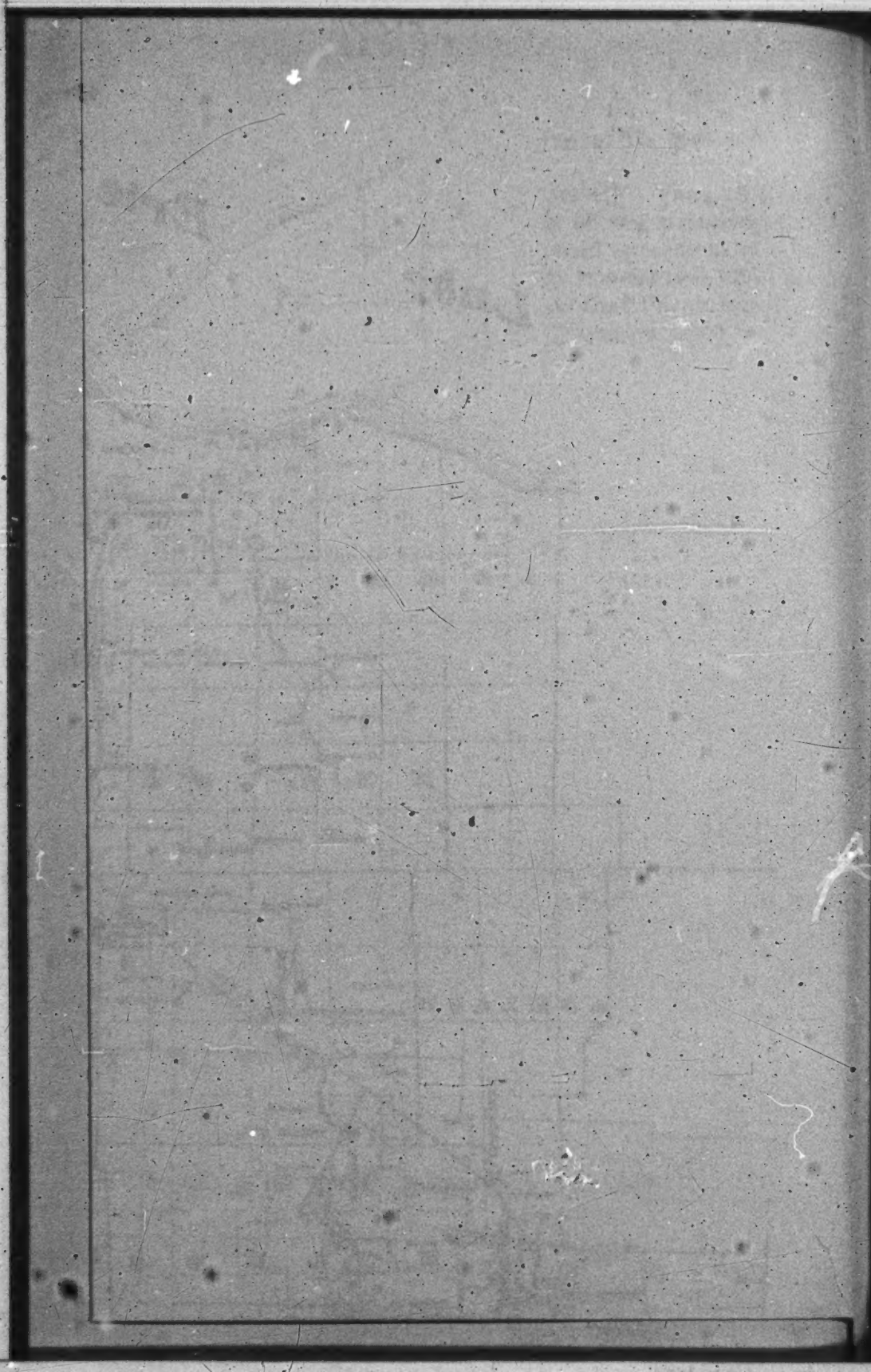
Witness the corporate names and seals of the parties hereto, duly affixed and attested by their proper officers as of the day and year first above written.

Hope Natural Gas Company, by Jno. B. Corrin, Vice-President. Attest: S. E. W. Burnside, Secretary. The East Ohio Gas Company, by R. W. Gallagher, President. Attest: R. W. Brink, Secretary.

(Here follows map, side folio 81.)


Lake Erie
APPENDIX "B"
GEAUGA
CUYAHOGA
LORAIN
TRUMBULL
PORTAGE
SUMMIT
MEDINA
MAHONING
STARK
ASHLAND
WAYNE
COLUMBIANA
CARROLL
HOLMES
TUSCARAWAS

KNOX
COSHOCTON
HARRISON
GUERNSEY
BELMONT
MONROE
WEST VIRGINIA
Ohio River
81



[fol. 82] In United States District Court, Southern District of Ohio, Eastern Division

No. 792. In Equity

The East Ohio Gas Company, a Corporation, Complainant,

vs.

The Tax Commission of Ohio, Quincy A. Davis, John S. Edwards, and George C. Braden, as Members of the Tax Commission of Ohio; Joseph T. Tracy, Auditor of the State of Ohio; H. Ross Ake, Treasurer of the State of Ohio; Clarence J. Brown, Secretary of the State of Ohio; Gilbert Bettman, Attorney General of Ohio, Defendants

At Columbus

Opinion Upon Final Submission

Before Hickenlooper, Circuit Judge, and Hough and Nevin, District Judges

Per Curiam:

The only question for decision in the present case is whether the business of the petitioner, the retail distribution and sale of natural gas in the cities of Cleveland, Youngstown, Akron, etc., is to be regarded as a local and intrastate business subject to the excise tax imposed by General Code Sec. 5483, or whether such business is so colored by the fact that the gas is brought from West Virginia, as to take on the characteristics of, and be classified as, interstate commerce, which, it is conceded, can not be burdened by an excise tax. U. S. Constitution, Art. 1, sec. 8; Rosenberger v. Pacific Exp. Co., 241 U. S. 48, 50; New Jersey Telephone Co. v. Tax Board, 280 U. S. 338, 346.

The petitioner is an Ohio corporation engaged in selling natural gas to consumers under local franchises from municipalities in the eastern part of that state. Some of its product is produced in the Ohio field, but, for determination of the pivotal question here involved, that fact is immaterial. It is conceded that, as regards the sale of the gas [fol. 83] produced in Ohio, the excise tax is applicable.

Most of the gas sold by petitioner is purchased from The Hope Natural Gas Company, a corporation under the laws of West Virginia with producing fields located in that state, and is delivered to petitioner by pipe line at the state boundary. It is with the sale of this gas only that we are concerned. It should also be observed that The Hope Natural Gas Company is not taxed by virtue of its sales to petitioner; nor is any excise tax attempted to be laid upon the right to transport such gas from the point of delivery at the state boundary to the point of delivery at the state boundary to the point of consumption. The excise tax is computed solely upon gross receipts from sales to local consumers.

It must be conceded that, in as much as transportation of whatever goods, from a point of origin in one state to a point of consumption in another state, is interstate commerce, so here the transportation of gas by pipe-line from West Virginia to Cleveland is interstate commerce. Such commerce retains its interstate character throughout the entire journey—or for so long as the journey itself is not broken, even though that be to the very burner of the consumer. Pennsylvania Gas Co. v. Public Service Comm., 252 U. S. 23; Illinois Cent. R. R. v. Louisiana Comm., 236 U. S. 157, 163. The fact that title to the gas passes at the state border is also of no material significance. Peoples Natural Gas Co. v. Public Service Comm., 270 U. S. 550, 554. Upon these hypotheses it is contended by the petitioner that the proceeds of the sale of the West Virginia gas at the end of its interstate journey, must of necessity be receipts arising from interstate commerce, and that the tax cannot be sustained since it is either "a tax upon appellant's" (Petitioner's) "gross receipts from interstate and foreign commerce or a license fee to be computed thereon." New Jersey Telephone Co. v. Tax Board, supra; Pullman Co. v. Richardson, 261 U. S. 330, 338. This we think to be a non sequitur in the present case.

The petitioner is a public service corporation, exercising [fol. 84] rights of eminent domain and occupancy of the public streets. It exercises its franchises only through grant from the state, even though control of such franchise grants is delegated to the municipalities. The tax purports to be, and is, we think, an excise tax; that is, "an impost for a license to pursue certain callings, or to deal in

special commodities, or to exercise particular franchises." Maine v. Grand Trunk Ry. Co., 142 U. S. 217, 227; compare, Flint v. Stone Tracy Co., 220 U. S. 108, 151. It is neither a property tax nor an attempt at license and regulation under the police powers of the state. But even such an excise tax may not be laid upon the right to engage in interstate commerce, nor measured by the proceeds of sales in such commerce. Galveston, etc. Ry. Co. v. Texas, 210 U. S. 217. It may, however, be levied upon the right to engage in a purely intrastate public utility business, and when so levied the amount of the tax may be measured by the gross receipts from such business. Thus we inevitably return to a determination whether the particular business, the gross receipts from which form the measure of the tax, is truly and essentially a local and intrastate business, separate and distinct from the elements of interstate commerce collaterally associated with it, for "it is the" (interstate) "commerce itself which must not be burdened by state exactions which interfere with the exclusive Federal authority over it," not local or intrastate commerce. Baltic Mining Co. v. Massachusetts, 231 U. S. 68, 83. And if the tax be levied upon the right to engage in an essentially local and intrastate public utility business, "it is no objection that the measure of taxation is found in the income produced in part from property which of itself considered is non-taxable." Flint v. Stone Tracy Co., supra, at page 165. So here, if the business subject to the excise be essentially local, it is no objection that the tax is measured by income made possible only through the prior transportation of gas in interstate commerce, which commerce may not itself be thus burdened.

So simplified and considered, we are constrained to the opinion that the petitioner's business, which was subjected [fol. 85] to the excise tax, was a local or intrastate business which might properly thus be taxed. Public Utilities Comm. v. Landon, 249 U. S. 236; Missouri v. Kansas Natural Gas Co., 265 U. S. 298. Not only does the language employed by the Supreme Court in these two cases aptly and comprehensively cover the present issue, but all other indicia of the true character of the business point in the same direction. Thus bulk must be considered as broken when the gas passed from the great gas transporta-

tion lines into the network of smaller distributing lines, in analogy to the original package doctrine; the interstate journey must be considered as ended when the gas is placed in proper containers, be these tanks or low pressure distribution system, for delivery to local trade, in analogy to the storage cases (Atlantic Coast Line v. Standard Oil Co., 275 U. S. 257, 269); the gas must be considered processed and modified in an essential characteristic when its pressure is so reduced as to make it available for consumers' use, if analogy to the processing of goods, as breaking the interstate journey, be drawn; and, so far as the relationship between the company and consumers is concerned, it makes no difference whatever to the latter whence comes the gas. The trade was essentially local. The transportation of the gas from West Virginia was but a preparation for it. Wagner v. City of Covington, 251 U. S. 95, 103.

We are not here and now concerned with various questions suggested during oral argument, such as: whether the petitioner's position would be in anywise different had it produced the gas on its own properties in West Virginia, instead of purchasing it; whether any excise tax could be laid directly upon the business of transporting it through the state; the nature and permissible extent of regulation under the police power of the state; or the effect of accepting the total of consumers' meter readings as indicating the gross amount sold to petitioner. These matters all become immaterial when we arrive at the decision of the independence and local character of the business, the gross receipts from which serve as a measure of the tax. The intrastate nature of this business is further emphasized, [fol. 86] also, when we consider that no part of the receipts which serve as such measure is paid from without the state, and no deliveries of gas, with which we are here concerned, are made by the petitioner in another state.

Decree may be presented dismissing the bill for want of equity.

Smith Hickenlooper, United States Circuit Judge.
Benson W. Hough, United States District Judge.
Robert R. Nevin, United States District Judge.

For Complainant: Tolles, Hogsett & Ginn, William B. Cockley.

For Defendants: Gilbert Bettman, Attorney General of the State of Ohio; Lewis F. Laylin and William J. Ford, Special Counsel.

[fol. 87] In United States District Court, Southern District of Ohio, Eastern Division

In Equity. No. 792

The East Ohio Gas Company, a Corporation, Complainant,

vs.

The Tax Commission of Ohio et al., Defendants

Decree—July 19, 1930

This cause came on to be heard at this term on the pleadings, evidence, consisting of an Agreed Statement of Facts, and arguments of counsel, before the Honorable Smith Hickenlooper, United States Circuit Judge, and the Honorable Robert R. Nevin and the Honorable Benson W. Hough, United States District Judges, constituted and sitting as a court in this cause under section 380 of Title 28 of the United States Code, formerly Section 266 of the United States Judicial Code; and thereupon, upon consideration thereof, the Court finding upon the issues joined for the defendants, it is ordered, adjudged and decreed as follows, viz:

That the Bill of Complaint herein be and the same hereby is dismissed.

It is further ordered, adjudged and decreed that the defendants have and recover from the complaint their costs herein expended, taxed at $—, for which execution is hereby awarded.

To which order, judgment and decree the complaint excepts.

Smith Hickenlooper, United States Circuit Judge.
Robert R. Nevin, United States District Judge.
Benson W. Hough, United States District Judge.

Approved as to form.
William B. Cockley, Solicitor for Complainant.

[fol. 88] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL, ASSIGNMENT OF ERRORS, AND PRAYER FOR REVERSAL

Considering itself aggrieved by the decision dated July 19, 1930, of the District Court of the United States for the Southern District of Ohio, Eastern Division, constituted and sitting in this cause pursuant to Section 380 of Title 28 of the United States Code (formerly Section 266 of the United States Judicial Code), the plaintiff herein, The East Ohio Gas Company, hereby prays that an appeal be allowed to the Supreme Court of the United States in this cause and for an order fixing the amount of bond thereon.

And the said The East Ohio Gas Company assigns the following errors in the record and proceedings in said cause:

1. Said District Court erred in holding that gross receipts of The East Ohio Gas Company from the sale of natural gas purchased by it from the Hope Natural Gas Company of West Virginia and the Peoples Natural Gas Company of Pennsylvania at the Ohio state boundary line, and transported, distributed and sold by The East Ohio Gas Company to consumers in municipalities in the northern and eastern parts of the State of Ohio, are receipts from intrastate business taxable as such by the excise tax statutes of the State of Ohio (Section 5483 of the Ohio General Code and related sections), and in holding that an order of the Tax Commission of Ohio, fixing such gross receipts as subject to such tax and levying a tax thereon, does not violate the commerce clause (Article I, Section 8) of the Constitution of the United States.

2. Said District Court erred in refusing to grant the injunction prayed for in the Bill of Complaint seeking to enjoin the enforcement of said order of the Tax Commission of Ohio by it and by other officers of the State of Ohio, and in dismissing the Bill of Complaint.

[fol. 89] For which errors the plaintiff, The East Ohio Gas Company, prays that said decree of said District Court

dated July 19, 1930, in the above entitled cause be reversed and a decree rendered in favor of said plaintiff and for costs.

T. H. Hogsett, W. B. Cockley, Counsel for Appellant.

[fols. 90-94] In United States District Court

[Title omitted]

Order Allowing Appeal

The appellant in the above entitled suit having prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from a decree made and entered in the above entitled suit on the 19th day of July, 1930, by the District Court of the United States for the Southern District of Ohio, Eastern Division, constituted and sitting pursuant to Section 380 of Title 28 of the United States Code (formerly Section 266 of the United States Judicial Code), and from each and every part thereof, and having presented and filed its petition for appeal, assignment of errors and prayer for reversal pursuant to the statutes and rules of the Supreme Court of the United States in such cases made and provided:

It is now here ordered that an appeal be, and the same is hereby, allowed to the Supreme Court of the United States from said District Court of the United States, Southern District of Ohio, Eastern Division, in this cause, as provided by law, and it is further ordered that the Clerk of said District Court shall prepare and certify a transcript of the record, proceedings, and decree in this cause and transmit the same to the Supreme Court of the United States so that he shall have the same in said Court within thirty (30) days from this date.

And it is further ordered that security for costs on appeal be fixed in the sum of Five Hundred and no/100 Dollars ($500.00).

Benson W. Hough, United States District Judge.

[fol. 95] IN UNITED STATES DISTRICT COURT

[Title omitted]

DOCKET ENTRIES

April	2, 1930.	Bill of Complaint filed.
"	" "	Motion filed.
"	" "	Order hearing on Int. Injunction set for 6/7/30.
"	" "	Notice filed.
"	" "	Acknowledgment filed.
"	22, "	Subpoena in Chancery issued.
May	14, "	" " " " returned executed.
"	19, "	Entry leave to answer.
"	26, "	Answer filed.
June	24, "	Opinion filed.
July	19, "	Decree for Defendants. Bill dismissed.
Aug.	18, "	Petition for Appeal & Assgt. of Errors filed.
"	" "	Order allowing appeal.
"	" "	Appeal bond filed.
"	" "	Citation issued.
"	" "	Stipulation as to contents of record filed.
"	30, "	Stipulation as to certification of record filed.

[fol. 96] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION AS TO TRANSCRIPT OF RECORD

It is hereby stipulated by and between counsel of record herein that the transcript of record to be certified by the Clerk of this Court on appeal to the Supreme Court of the United States shall contain the following:

1. Bill of Complaint.

2. Motion for a restraining order and application for a hearing on temporary injunction under Judicial Code Section 266.

3. Notice of application for a temporary injunction and acknowledgment of service.

4. Order of the District Court setting the hearing on the interlocutory injunction for June 7, 1930.

5. Answer of the defendants.

6. Narrative form of testimony including Agreed Statement of Facts, Exhibit A.

7. Opinion of District Court.

8. Decree.

9. Petition for appeal, assignment of errors and prayer for reversal.

10. Order allowing appeal.

11. Copy of bond.

[fol. 97] 12. Original citation and return of service.

13. Docket entries of District Court.

14. Copy of stipulation as to contents of record to be certified.

William B. Cockley, Attorney for Complainant.
Gilbert Bettman, L. F. Laylin, & W. J. Ford, Attorneys for Defendants.

[fol. 98] Clerk's certificate to foregoing transcript omitted in printing.

[fols. 99 & 100] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND STIPULATION OF PARTS OF RECORD TO BE PRINTED—Filed Sept. 13, 1930

Comes now the Appellant in the above entitled cause and states that the points upon which it intends to rely in this Court in this case are as follows:

Point 1. That the District Court of the United States for the Southern District of Ohio, Eastern Division, erred in holding that gross receipts of The East Ohio Gas Company from the sale of natural gas purchased by it from the Hope Natural Gas Company of West Virginia and the Peoples Natural Gas Company of Pennsylvania at the Ohio state boundary line, and transported, distributed and sold by

The East Ohio Gas Company to consumers in municipalities in the northern and eastern parts of the State of Ohio, are receipts from intrastate business taxable as such by the excise tax statutes of the State of Ohio (Section 5483 of the Ohio General Code and related sections), and in holding that an order of the Tax Commission of Ohio, fixing such gross receipts as subject to such tax and levying a tax thereon, does not violate the commerce clause (Article I, Section 8) of the Constitution of the United States.

Point 2. That said District Court erred in refusing to grant the injunction prayed for in the Bill of Complaint seeking to enjoin the enforcement of said order of the Tax Commission of Ohio by it and other officers of the State of Ohio, and in dismissing the Bill of Complaint.

Respectfully submitted.

Thomas H. Hogsett, William B. Cockley, Counsel for the East Ohio Gas Company, Appellant.

[fol. 101] [File endorsement omitted.]

[fols. 102 & 103] STIPULATION AS TO PARTS OF THE RECORD TO BE PRINTED

To the Clerk:

It is hereby stipulated by and between counsel of record herein that only the following parts of the record as filed in this Court need be printed by the Clerk for the hearing of the case:

1. Bill of Complaint. (R. 2 to 23 incl.)
2. Notice of Application for a temporary injunction and acknowledgment of service. (R. 25 and 26.)
3. Order of District Court setting the hearing on the interlocutory injunction for June 7, 1930. (R. 27.)
4. Answer of the defendants. (R. 28 to 34 incl.)
5. Narrative Form of Testimony including Agreed Statement of Facts, Exhibit "A". (R. 35 to 81 incl.)
6. Opinion of District Court. (R. 82 to 86 incl.)
7. Decreed. (R. 87.)
8. Docket Entries. (R. 95.)

9. Petition for Appeal, assignment of errors, and prayer for reversal. (R. 88 and 89.)

10. Order allowing appeal. (R. 90.)

11. Clerk's Certificate. (R. 98.)

12. Stipulation as to contents of record to be certified to Supreme Court. (R. 96 and 97.)

Thomas H. Hogsett, William B. Cockley, Counsel for Appellant. Gilbert Bettman, Atty. Gen.; L. F. Laylin, and W. J. Ford, Counsel for Appellees.

[fol. 104] [File endorement omitted.]

Endorsed on cover: File No. 35,375. S. Ohio, D. C. U. S. Term No. 453. The East Ohio Gas Company, appellant, vs. The Tax Commission of Ohio et al. Filed September 13, 1930. File No. 35,375.